



INTRODUCTION TO

CRIMINAL JUSTICE

PRACTICE AND PROCESS

KENNETH J. PEAK • TAMARA D. HEROLD

5^{edition}



Introduction to Criminal Justice

Fifth Edition

Sara Miller McCune founded SAGE Publishing in 1965 to support the dissemination of usable knowledge and educate a global community. SAGE publishes more than 1000 journals and more than 600 new books each year, spanning a wide range of subject areas. Our growing selection of library products includes archives, data, case studies, and video. SAGE remains majority owned by our founder and after her lifetime will become owned by a charitable trust that secures the company's continued independence.

Los Angeles | London | New Delhi | Singapore | Washington DC | Melbourne

Introduction to Criminal Justice

Practice and Process

Fifth Edition

Kenneth J. Peak

University of Nevada, Reno

Tamara D. Herold

University of Nevada, Las Vegas



Los Angeles | London | New Delhi
Singapore | Washington DC | Melbourne



FOR INFORMATION:

SAGE Publications, Inc.
2455 Teller Road
Thousand Oaks, California 91320
E-mail: order@sagepub.com

SAGE Publications Ltd.
1 Oliver's Yard
55 City Road
London, EC1Y 1SP
United Kingdom

SAGE Publications India Pvt. Ltd.
Unit No 323-333, Third Floor, F-Block
International Trade Tower Nehru Place
New Delhi – 110 019
India

SAGE Publications Asia-Pacific Pte. Ltd.
18 Cross Street #10-10/11/12
China Square Central
Singapore 048423

Copyright © 2024 by SAGE Publications, Inc.

All rights reserved. Except as permitted by U.S. copyright law, no part of this work may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without permission in writing from the publisher.

All third-party trademarks referenced or depicted herein are included solely for the purpose of illustration and are the property of their respective owners. Reference to these trademarks in no way indicates any relationship with, or endorsement by, the trademark owner.

Printed in [the United States of America / Canada]

Paperback ISBN: 9781071848982

Loose Leaf ISBN: 9781071848975

Acquisitions Editor: Josh Perigo
Content Development Editor: Darcy Scelsi
Production Editor: Astha Jaiswal
Copy Editor: Amy Hanquist Harris
Typesetter: diacriTech
Cover Designer: Scott Van Atta
Marketing Manager: Victoria Velasquez

This book is printed on acid-free paper.

23 24 25 26 27 10 9 8 7 6 5 4 3 2 1

BRIEF CONTENTS

Preface		xxi
Acknowledgments		xxvii
About the Authors		xxix
PART I	CRIMINAL JUSTICE AS A SYSTEM: THE BASICS	1
Chapter 1	Fundamentals of Criminal Justice: Essential Themes and Practices	3
Chapter 2	Foundations of Law and Crime: Nature, Elements, and Measurement	25
Chapter 3	Theories of Criminality and Crime	53
Chapter 4	Ethical Essentials: Doing Right When No One Is Watching	75
PART II	THE POLICE	97
Chapter 5	Police Organization: Structure and Functions	99
Chapter 6	Police at Work: Patrolling and Investigating	125
Chapter 7	Policing Methods and Challenges: Issues of Force, Reform, and Liability	151
Chapter 8	Expounding the Constitution: Laws of Arrest, Search, and Seizure	169
PART III	THE COURTS	193
Chapter 9	Court Organization: Structure, Functions, and the Trial Process	195
Chapter 10	The Bench and the Bar: Those Who Judge, Prosecute, and Defend	225
Chapter 11	Court Methods and Challenges: Sentencing and Punishment	249
PART IV	CORRECTIONS	279
Chapter 12	Prisons and Jails: Structure and Function	281
Chapter 13	The World Behind Bars: The “Keepers” and the “Kept”	307
Chapter 14	Corrections in the Community: Probation, Parole, and Other Alternatives to Incarceration	331
PART V	SPANNING THE SYSTEM: METHODS AND ISSUES	359
Chapter 15	Juvenile Justice: Philosophy, Law, and Practices	361
Chapter 16	On the Crime Policy and Prevention Agenda: Immigration, Mass Murder, the Cyber Threat	385

Appendix: Bill of Rights: The First 10 Amendments to the United States Constitution	399
Assess Your Awareness Answers	401
Glossary	403
Endnotes	411
Index	441

DETAILED CONTENTS

Preface	xxi
Acknowledgments	xxvii
About the Authors	xxix
PART I CRIMINAL JUSTICE AS A SYSTEM: THE BASICS	1
Chapter 1 Fundamentals of Criminal Justice: Essential Themes and Practices	3
Learning Objectives	4
Assess Your Awareness	4
Introduction	5
Foundations of Criminal Justice: Legal and Historical Bases	6
The Criminal Law: How It Changes and How It Changes the System	6
The Consensus Versus Conflict Debate	7
<i>Consensus Theory of Justice</i>	7
• Going Global 1.1: Marijuana Legalization Around the World	9
<i>Conflict Theory of Justice</i>	10
Crime Control and Due Process: Do Ends Justify Means?	10
• You Be the . . . Legislator	11
Discretion: Making and Applying the Law	12
The Criminal Justice Process: An Overview of Flow and Functions	12
The Pathway Through the Process for the Person Experiencing the Criminal Justice System	14
Law Enforcement: Investigation/Arrest	14
• Practitioner's Perspective: Police Officer	14
Prosecution and Pretrial Activities	15
<i>Initial Appearance</i>	15
<i>Preliminary Hearing or Grand Jury</i>	16
Adjudication	16
<i>Arraignment</i>	16
<i>Trial</i>	16
Sentencing and Sanctions, Generally	16
Appellate Review	17
Corrections	18
The Juvenile Justice System	18
The Wedding Cake Model of Criminal Justice	18
Layer 1: Celebrated Cases	19
Layer 2: Serious Felonies	19
Layer 3: Lesser Felonies	19
Layer 4: Misdemeanors	20
Ethics Throughout the Criminal Justice System	20
• You Be the . . . Judge	20
In a Nutshell	21
Key Terms	22
Review Questions	22
Learn by Doing	22

Chapter 2 Foundations of Law and Crime: Nature, Elements, and Measurement	25
Learning Objectives	26
Assess Your Awareness	26
Introduction	27
Common Law and Its Progeny	28
Modern-Day Sources and Hierarchy of Law	29
Federal Law	29
State Law	29
City/County Law	30
Criminal and Civil Law	30
• Case Study 2.1: Criminal and Civil Law—The O. J. Simpson Case	31
Substantive and Procedural Law	32
Essential Elements: Mens Rea and Actus Reus	32
Mens Rea: Intent Versus Motive to Commit Crime	33
Actus Reus: The Act	34
• You Be the . . . Police Officer	34
Felonies and Misdemeanors	35
Offense Definitions and Categories	35
Crimes Against Persons	35
Homicide	35
• You Be the . . . Prosecutor	38
Sexual Assault	39
Robbery	39
Aggravated Assault	39
Crimes Against Property	40
Burglary	40
Larceny-Theft	40
Motor Vehicle Theft	40
Arson	40
Public Order Crimes	41
White-Collar Crime	41
Organized Crime	42
Measuring Crime and Victimization	42
How Much Crime in the United States? Depends on Whom You Ask	43
The FBI's Uniform Crime Reports	43
Crime Rate	44
Part I Offenses	44
Part II Offenses	45
Cautions and Criticisms of UCR Data	45
The Hierarchy Rule: Definition and Application	46
• Case Study 2.2: The Hierarchy Rule	46
The National Incident-Based Reporting System	47
The National Crime Victimization Survey	47
• Going Global 2.1: Measuring Crime Victimization in England and Wales	48
• Practitioner's Perspective: Criminal Justice Program Director, Former Law Enforcement Officer, and Drug Investigator	48
In a Nutshell	49
Key Terms	50
Review Questions	50
Learn by Doing	51

Chapter 3 Theories of Criminality and Crime	53
Learning Objectives	54
Assess Your Awareness	54
Introduction	55
Classical and Positivist Theories	56
The Classical School	56
Neoclassical Criminology	57
Positivist Criminology	58
• Case Study 3.1: Ariel Castro—The Cleveland “Monster”	58
• Practitioner’s Perspective: Crime Analyst	59
Biological, Trait, and Developmental Theories	60
• You Be the . . . Legislator	61
Social Structure Theories	61
Social Disorganization Theory	62
Strain Theory	62
• You Be the . . . Crime Analyst	62
Social Process Theories	63
Learning Theory	63
Control Theory	63
Labeling Theory	64
Social Conflict Theories	64
Feminist Theories	65
Environmental Criminology Theories	67
Routine Activity Theory	67
Situational Crime Prevention	68
• Going Global 3.1: International Environmental Criminologists	69
In Their Own Words: Voices of People Who Have Offended	70
Armed Robbery	70
Burglary	70
• Case Study 3.2: Application of Crime Theories	71
• You Be the . . . Criminologist	71
Carjacking	72
In a Nutshell	72
Key Terms	73
Review Questions	73
Learn by Doing	74
Chapter 4 Ethical Essentials: Doing Right When No One Is Watching	75
Learning Objectives	76
Assess Your Awareness	76
Introduction	77
Good Examples of Bad Examples	77
Philosophical Foundations	78
Types of Ethics	79
Noble Cause Corruption	80
Ethics in Policing	80
A Primer: The Oral Job Interview	80
Police Corruption	81
• Going Global 4.1: Mexico—Where an Entire Police Force May Be Corrupt	81
To Inform or Not to Inform: The Code of Silence	82
The Law Enforcement Code of Ethics and Oath of Honor	82

Accepted and Deviant Lying	83
• Case Study 4.1: Sample Agency Policy Governing Police Conduct	84
Accepting Gratuities	84
• You Be the . . . Police Officer	85
Greed and Temptation	85
"Random Acts of Kindness": The Unseen Side of Police Work	86
• Practitioner's Perspective: Police Internal Affairs Investigator	87
• Case Study 4.2: A Hippocratic Oath for Police?	88
Ethics in the Courts	88
Evolving Standards of Conduct	88
The Judge	88
Prosecutors	89
• You Be the . . . Ethics Committee Member	90
Defense Attorneys	90
Other Court Employees	90
Ethical Conduct of Federal Employees	91
The Ethics Reform Act and the Whistleblower Protection Act	91
The Federal Judiciary	91
Ethics in Corrections	92
• You Be the . . . Correctional Officer	92
Ethics Tests for the Criminal Justice Student	93
In a Nutshell	94
Key Terms	95
Review Questions	95
Learn by Doing	95
 PART II THE POLICE	 97
Chapter 5 Police Organization: Structure and Functions	99
Learning Objectives	100
Assess Your Awareness	100
Introduction	101
English and Colonial Roots: An Overview	101
Sheriff	102
Constable	102
Coroner	102
Justice of the Peace	102
Police Reform in England, 1829	103
Policing Comes to the United States	103
The Political Era, 1840s–1930s	103
The Reform Era, 1930s–1980s	103
The Community Era, 1980s–Present	105
Federal Law Enforcement	106
Department of Homeland Security	106
<i>Federal Law Enforcement Training Center (FLETC)</i>	108
Department of Justice	109
<i>Federal Bureau of Investigation</i>	109
<i>Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)</i>	111
<i>Drug Enforcement Administration (DEA)</i>	111
<i>U.S. Marshals Service (USMS)</i>	111
Other Federal Agencies	112
<i>Central Intelligence Agency (CIA)</i>	112

<i>Internal Revenue Service (IRS)</i>	112
INTERPOL	112
State Agencies	113
Patrol, Police, and Investigative Organizations	113
Other Special-Purpose State Agencies	114
Local Agencies: Municipal Police Departments and Sheriff's Offices	114
Basic Operations	114
Organization	115
• Practitioner's Perspective: Police Lieutenant	117
Interested in a Career? Some General Considerations	118
On Guard: The Private Police	119
In a Nutshell	121
Key Terms	122
Review Questions	122
Learn by Doing	123
Chapter 6 Police at Work: Patrolling and Investigating	125
Learning Objectives	126
Assess Your Awareness	126
Introduction	127
From Citizen to Patrol Officer	127
Recruiting the Best	127
Does a College Degree Matter?	128
Recruit Training	130
Field Training Officer	131
Having the "Right Stuff": Defining the Role	132
A Working Personality	132
Three Distinctive Styles of Policing	132
Four Basic Tasks	133
Perils of Policing	133
A Study of Patrol Effectiveness	134
• Going Global 6.1: Dubai Builds a Patrol Vehicle for the Future	135
Stressors in Police Work	135
Sources of Stress	135
<i>Organizational and Administrative Practices</i>	135
<i>The Criminal Justice System</i>	136
<i>The Public</i>	136
<i>Stressors Intrinsic to Police Work</i>	136
Coping With Stress	136
Use of Discretion	137
The Myth of Full Enforcement	137
Attempts to Define Discretion	137
Determinants of Discretionary Actions	138
Pros and Cons of Discretion	138
Community Policing and Problem-Solving	139
The Work of Forensics and Detectives	140
Attributes of Detectives	141
Forensic Science and Criminalistics: Defining the Terms	141
Investigative Stages and Activities	142
A Word About Crime Scenes	143
• Practitioner's Perspective: Crime Scene Investigator	143
Uses of Informants and Interrogations	144
• You Be the . . . Detective	145

In the Detective's Toolkit: "ROP" and "PIVOT"	145
<i>Repeat Offender Programs (ROP)</i>	145
<i>PIVOT (Place Based Investigations of Violent Offender Territories)</i>	145
Using DNA Analysis	146
• Case Study 6.1: A Cold Case Involving "The Boston Strangler"	147
In a Nutshell	148
Key Terms	149
Review Questions	149
Learn by Doing	150
Chapter 7 Policing Methods and Challenges: Issues of Force, Reform, and Liability	151
Learning Objectives	152
Assess Your Awareness	152
Introduction	153
The Killing Heard Around the World	153
Key Questions That Resonated in the Aftermath	154
<i>Is Police Reform Needed?</i>	154
<i>Should Police Training and Roles Be Modified?</i>	155
<i>Should the Laws Be Changed?</i>	155
<i>Should Federal Officers Be Deployed in Cities?</i>	156
• Case Study 7.1: Police Reform via Executive Order	156
<i>Should Local Police Be Given Military Gear?</i>	157
• Case Study 7.2: The CAHOOTS Program	157
Alive and Well for Now: Qualified Immunity	158
Use of Force: A Sacred Trust	158
A Sordid History	159
Constitutional Policing, Legitimacy, and Procedural Justice	160
Constitutional Policing	160
Legitimacy	161
Procedural Justice	161
• Practitioner's Perspective: Chief of Police	161
Police Brutality	162
• Going Global 7.1: Police Abuses in India	163
When Failing the Public Trust: Civil Liability	163
Torts and Negligence	164
Section 1983 Legislation	164
Potential Areas of Liability	165
<i>Proximate Cause</i>	165
<i>Persons in Custody and Safe Facilities</i>	165
<i>Failure to Protect</i>	165
• Case Study 7.3: Use of Force With the Mentally Ill	165
<i>Vehicle Pursuits</i>	166
• You Be the . . . Judge	166
In a Nutshell	167
Key Terms	167
Review Questions	167
Learn by Doing	168
Chapter 8 Expounding the Constitution: Laws of Arrest, Search, and Seizure	169
Learning Objectives	170
Assess Your Awareness	170

Introduction	171
Some Caveats	171
The Fourth Amendment	172
Probable Cause	172
• Case Study 8.1: Probable Cause	172
The Exclusionary Rule	173
Arrests With and Without a Warrant	174
• You Be the . . . Police Officer	175
Search and Seizure With and Without a Warrant	175
<i>Searches Incident to Lawful Arrest</i>	176
• Practitioner's Perspective: Special Agent	179
• Case Study 8.2: Searches Incidental to Lawful Arrest: David Riley's Cell Phone	180
<i>Stop and Frisk</i>	180
• Case Study 8.3: NYPD Stop and Frisk: Is It Racial Profiling? Does It Reduce Crime?	181
<i>Searches of Automobiles</i>	182
• Going Global 8.1: Police Search and Seizure Around the World	183
<i>Plain-View and Open-Field Searches</i>	184
<i>Consent to Search</i>	185
Electronic Surveillance	185
The Fifth Amendment	185
Decisions Eroding Miranda	187
• You Be the . . . Judge	187
Lineups and Other Pretrial Identification Procedures	187
The Sixth Amendment	188
In a Nutshell	190
Key Terms	191
Review Questions	191
Learn by Doing	191
 PART III THE COURTS	 193
Chapter 9 Court Organization: Structure, Functions, and the Trial Process	195
Learning Objectives	196
Assess Your Awareness	196
Introduction	197
Colonial Courts: An Overview	197
Our Adversarial System	198
• Going Global 9.1: Adversarial Versus Inquisitorial Justice Systems	198
The Influence of Courts in Policy-Making	198
• Practitioner's Perspective: Attorney	200
American Courts: A Dual-Court System	201
State Courts	201
Where Most Cases Begin: Lower Courts	201
General Jurisdiction: Major Trial Courts	202
Appeals Courts	204
Federal Courts	205
Federal Trial Courts: U.S. District Courts	205
U.S. Courts of Appeals: Circuit Courts	206
U.S. Supreme Court	206
<i>Judges and Advocacy</i>	207
<i>Conferences and Workload</i>	207
• Case Study 9.1: Criminal Law From the U.S. Circuit Courts	207
<i>Administration</i>	208
• You Be the . . . Judge	208

Making Preparations: Pretrial Processes	209
Booking, Initial Appearance, Bail, and Preliminary Hearing	209
<i>Booking</i>	209
<i>Initial Appearance</i>	209
<i>Bail</i>	210
<i>Preliminary Hearing</i>	211
Grand Juries	211
Arraignment	212
Plea Negotiation	212
Jury Trials	213
• You Be the . . . Defense Attorney	214
Pretrial Motions	215
Discovery	215
Diversion Programs/Problem-Solving Courts	216
The Trial Process	217
Right to a Speedy Trial: “Justice Delayed . . .”	217
Trial Protocols	218
• Case Study 9.2: An Insider’s View of a Lower Court	220
Technologies in the Courts	221
Achieving Paper on Demand	221
Emerging Technologies	221
In a Nutshell	222
Key Terms	223
Review Questions	224
Learn by Doing	224
Chapter 10 The Bench and the Bar: Those Who Judge, Prosecute, and Defend	225
Learning Objectives	226
Assess Your Awareness	226
Introduction	227
Those Who Would Be Judges: Selection Methods and Issues	228
Methods of Selection in State Courts	228
Debating Judges and Politics	228
• You Be the . . . Judge	230
“Investing” in Judges?	230
Judges’ Benefits, Training, and Challenges	231
• Going Global 10.1: Studying Law	232
The Art of Judging, Courtroom Civility, and Judicial Misconduct	233
“Good Judging”	233
Courtroom Civility	233
Judicial Misconduct	234
The Attorneys	235
“Gatekeeper” of the Justice System: Prosecutor	235
• You Be the . . . Victim Advocate	236
Prosecutorial Immunity and Misconduct	236
“Guiding Hand of Counsel”: Defense Attorney	236
<i>Duties and Strategies</i>	237
<i>Indigent Services</i>	238
Courtroom Work Group	239
• Practitioner’s Perspective: Court Administrator	239
Defenses	240
Justification Defenses	240
<i>Self-Defense</i>	240

• Case Study 10.1: “Stand Your Ground” Laws	241
<i>Necessity</i>	242
<i>Duress</i>	242
Excuse Defenses	242
<i>Age</i>	242
<i>Entrapment</i>	242
<i>Intoxication</i>	243
<i>Double Jeopardy</i>	243
<i>Mental Illness/Insanity</i>	243
• Case Study 10.2: James Holmes—The “Batman” Shooter	244
In a Nutshell	245
Key Terms	246
Review Questions	246
Learn by Doing	246
Chapter 11 Court Methods and Challenges: Sentencing and Punishment	249
Learning Objectives	250
Assess Your Awareness	250
Introduction	251
Purposes of Punishment	251
Four Goals	252
Factors Influencing Punishment	253
• You Be the . . . Judge	254
Punishment Models, Methods, and Reforms	254
• Practitioner’s Perspective: Criminal Defense Attorney	258
Making Punishment Fit the Crime	259
• You Be the . . . Legislator	259
Types of Sentences to Be Served	260
Determinate and Indeterminate Sentences	260
Concurrent and Consecutive Sentences	261
Sentencing Guidelines	261
Background: Legislation and Court Decisions	261
Federal Sentencing Guidelines	262
State-Level Sentencing Guidelines	263
• Going Global 11.1: Sentencing Guidelines in Australia	263
Victim Impact Statements	265
• Case Study 11.1: Victim Impact Statements	267
Capital Punishment	268
Arguments For and Against	268
<i>Arguments in Favor</i>	269
<i>Arguments in Opposition</i>	269
Key Supreme Court Decisions	270
Methods of Execution	271
• Case Study 11.2: The Reality of Death by Lethal Injection	273
Wrongful Convictions: Rethinking the Death Penalty	273
• Case Study 11.3: Exonerations	274
Recent Trends in Federal Executions	274
Aggravating and Mitigating Circumstances	275
Criminal Appeals	275
In a Nutshell	276
Key Terms	277
Review Questions	277
Learn by Doing	277

PART IV	CORRECTIONS	279
Chapter 12	Prisons and Jails: Structure and Function	281
Learning Objectives		282
Assess Your Awareness		282
Introduction		283
Correctional Facilities as Organizations		284
Distinguishing Jails and Prisons		284
Incarcerated Persons, Employment, and Expenditures		285
<i>A Note on Correctional Populations and COVID-19</i>		285
A “Prescription” for Coping With Infectious Diseases		286
The Correctional Organization: Types, Mission, and Classification		286
General Mission and Features		286
<i>Do Prisons Rehabilitate?</i>		287
Punishment for Some, a “Step Up” for Others		287
• Practitioner’s Perspective: Jail Administrator		288
Classification of Incarcerated Persons: A Cornerstone of Corrections		289
State Prisons as Organizations		290
Federal Prisons as Organizations		292
Prison Types and General Information		292
<i>Minimum Security (7)</i>		292
<i>Low Security (36)</i>		292
<i>Medium Security (48)</i>		293
<i>High Security (17)</i>		293
<i>Administrative Security (20)</i>		293
The First Step Act and Federal Prisons		293
Community Corrections in the Federal System		294
Supermax Prisons		294
Origin		294
Two Key Components: Operation and Design		295
Effects on Incarcerated Persons		295
Constitutionality		295
• Going Global 12.1: Some of the World’s Worst Prisons		296
Private Prisons		297
Jails as Organizations		297
The New Generation/Direct Supervision Jail		298
Jail Treatment Programs		300
Making Jails Productive Through Labor		300
Technologies in Correctional Facilities: Going After Contraband		301
The Body Scanner		302
• You Be the . . . Warden		302
Offender Programming and Management		302
In a Nutshell		303
Key Terms		304
Review Questions		304
Learn by Doing		305
Chapter 13	The World Behind Bars: The “Keepers” and the “Kept”	307
Learning Objectives		308
Assess Your Awareness		308
Introduction		309

The Nature of Incarceration	310
Deprivations and “Pains” of Imprisonment	310
Becoming “Prisonized”	311
Conditions of Confinement	312
• Case Study 13.1: Congressional Calls to Close Rikers Island	313
• Practitioner’s Perspective: Jail Lieutenant: Supervising Staff and Incarcerated Persons	313
Solitary Confinement: Use and Effects	314
• Case Study 13.2: Chauvin to Face a Long Solitary Term in Prison	315
Prison and Jail as Work	315
The Warden: Profile and Role	316
Correctional Officers	317
Jail Personnel	318
Issues of Prison Governance	318
Sexual Violence and Coercion	319
Drug Interdiction and Treatment	319
Women in Prison: Selected Rights and Challenges	320
• Case Study 13.3: New Laws End Use of Restraints on Incarcerated Women Who Are Pregnant	321
• You Be the . . . Judge	322
Incarcerated Persons With Mental Illness	323
Incarcerated Older Adults	323
Prison Gangs	323
• Going Global 13.1: As Bad as It Gets—Prison Gang Slaughter in Ecuador	324
Coping With Riots	325
Constitutional Rights of the Incarcerated Person	326
Demise of the Hands-Off Doctrine	326
Selected Court Decisions	326
<i>A “Slave of the State”</i>	326
<i>Legal Remedy and Access to the Courts</i>	326
<i>First Amendment: Freedom of Religion and Mail Communications</i>	327
<i>Eighth Amendment: Search and Seizure</i>	327
<i>Fourteenth Amendment: Due Process</i>	327
• You Be the . . . Criminal Justice Policymaker	328
Preparation for Reentry and Aftercare	328
In a Nutshell	328
Key Terms	329
Review Questions	329
Learn by Doing	330
Chapter 14 Corrections in the Community: Probation, Parole, and Other Alternatives to Incarceration	331
Learning Objectives	332
Assess Your Awareness	332
Introduction	333
Why Alternatives to Incarceration?	333
Origins of Probation and Parole	334
Probation Begins: The Humble Shoe Cobbler	334
Parole Origins: Alexander Maconochie	335
Probation and Parole Today	336
Probation: Eligibility and Legal Rights	336
• Case Study 14.1: Terms and Conditions of Probation	338
• You Be the . . . Judge	340
Parole: Eligibility and Legal Rights	340
• You Be the . . . Parole Board	344
Do Probation and Parole Work?	344

• Going Global 14.1: Probation Supervision	345
Functions of Probation and Parole Officers	346
Probation and “Front-End” Duties	346
• Practitioner’s Perspective: Probation Officer	347
Parole and “Back-End” Duties	348
The Burden of Large Caseloads	348
To Arm or Not to Arm	349
Other Alternatives: Intermediate Sanctions	349
Intensive Supervision Probation and Parole	349
House Arrest	350
Electronic Monitoring	351
Shock Probation/Parole	351
Boot Camps/Shock Incarceration	352
• Case Study 14.2: Success for the Waukesha County, Wisconsin, Day Report Center	353
Day Reporting Centers	353
Halfway Houses	353
Furloughs	354
Confronting Recidivism: The Risk-Need-Responsivity (RNR) Model	354
Restorative Justice	354
In a Nutshell	356
Key Terms	357
Review Questions	357
Learn by Doing	358
 PART V SPANNING THE SYSTEM: METHODS AND ISSUES	 359
Chapter 15 Juvenile Justice: Philosophy, Law, and Practices	361
Learning Objectives	362
Assess Your Awareness	362
Introduction	363
History of Juvenile Justice	363
Early Treatment: Houses of Refuge, Reformatories	364
A Movement Begins: Illinois Legislation	365
Status Offenses	365
Unique Philosophy, Principles, and Goals	366
Parens Patriae and In Loco Parentis	366
Underlying Principles of the Juvenile Court	367
<i>Presumption of Innocence</i>	367
<i>Least Involvement With the System</i>	367
<i>Best Interest of the Child</i>	367
Goals of the Juvenile Justice System	368
More Legal Protection: The Juvenile Justice Reform Act of 2018	369
A Recent Shift in Policy, Principles, and Processes	369
• Case Study 15.1: A Sampling of Recent Laws Enacted to Protect Juveniles	369
• You Be the . . . Police Officer	371
Juvenile Offending Today: Extent and Possible Causes	371
Case Flow of the Juvenile Justice Process	372
• Practitioner’s Perspective: Juvenile Court Counselor	376
The Problem of Labeling	377
Is There a “School-to-Prison Pipeline”?	377
Youth Gangs: An Overview	378
Youth Gang Membership	378
What Works With Youth Gangs?	378

Aftercare and Reentry	379
Significant Court Decisions	379
<i>Right to Counsel</i>	379
<i>The Centerpiece: In Re Gault</i>	380
• Case Study 15.2: Forty-Five Years After Gault: The Experience of Corey Bauer	380
Burden of Proof Standard	381
Trial by Jury, Double Jeopardy, and Executions	381
Right to the Miranda Warning	381
• Going Global 15.1: Juvenile Torture in Iraq	381
In a Nutshell	382
Key Terms	383
Review Questions	383
Learn by Doing	384
 Chapter 16 On the Crime Policy and Prevention Agenda: Immigration, Mass Murder, the Cyber Threat	 385
Learning Objectives	386
Assess Your Awareness	386
Introduction	386
Immigration: Seeking A Better Life	387
• You Be the . . . Attorney General	388
The Criminality Question	388
Challenges Posed by Migrants and Asylum Seekers	388
What Can Law Enforcement Do?	389
• Case Study 16.1: In the Police Toolkit: Section 287(g)	389
Role of the Courts	390
Mass Murder	390
Extent and Methods	390
What We Know	390
Is Prevention Possible?	391
• Case Study 16.2: How to Prevent a Mass Shooting	392
The Link With Mental Illness	392
The Courts' Role: Assessing Liability	393
The Cyber Threat	394
Types and Methods	394
What Can Be Done?	394
• Case Study 16.3: How to Bust a Russian National for Cyberattacks	396
Role of the Courts	396
• Case Study 16.4: Courts Dedicated to Trying Cybercrimes?	396
In a Nutshell	397
Key Terms	398
Review Questions	398
Learn by Doing	398
 Appendix: Bill of Rights: The First 10 Amendments to the United States Constitution	 399
Assess Your Awareness Answers	401
Glossary	403
Endnotes	411
Index	441

PREFACE

A UNIQUE APPROACH

Famed educator John Dewey advocated the “learning by doing” approach to education, or problem-based learning. This book is written, from start to finish, with that philosophy in mind. Its approach also comports with the popular learning method espoused by Benjamin Bloom, known as Bloom’s taxonomy, in which he called for “higher-order thinking skills”—critical and creative thinking that involves analysis, synthesis, and evaluation.

This book also benefits from the authors having many years of combined practitioners’ and academic experience, including several positions in criminal justice administration, policing, corrections, and research and training for police agencies, major sports leagues, and private industries. Therefore, its chapters contain a palpable, real-world flavor that college and university criminal justice students typically find missing from their textbooks.

It is hoped that readers will put to use the several features of the book that are intended to help them accomplish the overall goal of learning by doing. In addition to chapter-opening questions (which allow students to assess their knowledge of the chapter materials), learning objectives, and a chapter summary, each chapter contains features such as case studies and You Be the . . . (Judge, Prosecutor, Defense Attorney, and so on, as the specific situation requires), as well as a list of key terms, review questions, and Learn by Doing activities at the end of each chapter. Also provided are Practitioner’s Perspectives (in which people in the field describe their criminal justice occupations) as well as brief glimpses into comparative criminal justice systems, law, and practice in selected foreign venues (Going Global features). Taken together, these supplemental materials should greatly enhance readers’ critical analysis, problem-solving, and communication capabilities, allowing them to experience the kinds of decisions that must be made in the field.

In today’s competitive job market, students who possess these kinds of knowledge, skills, and abilities will have better opportunities to obtain employment as a criminal justice practitioner and to succeed in the field. Although the book certainly delves into some theoretical, political, and sociological subject matter, it attempts to remain true to its *practical*, applied focus throughout and to the extent possible.

DISTINCTIVE CHAPTER CONTENTS

This book also contains chapters devoted to topics not typically found in introductory criminal justice textbooks. For example, Chapter 4 is devoted to criminal justice ethics. Ethics is always a timely topic for our society and especially for today’s criminal justice students and practitioners. Chapter 16 also describes unique and contemporary issues on the U.S. criminal justice policy-making agenda: immigration, mass murder, and cyber threats. Finally, several chapters also discuss the technologies employed in the system and the aforementioned global criminal justice practices.

In sum, this book introduces the student to the primary individuals, theorists, practitioners, processes, concepts, technologies, and terminologies as they work within or are applied to our criminal justice system. Furthermore, the concepts and terms learned in this introductory textbook will serve as the basis for more complex criminal justice studies of police, courts, and corrections in later course work.

CHAPTER ORGANIZATION

To facilitate the book's goals, we first need to place the study of criminal justice within the big picture, which is accomplished in the four chapters in Part I. **Chapter 1** briefly examines why it is important to study criminal justice, foundations and politics of criminal justice, an overview of the criminal justice process and the incarcerated person's flow through the system, and how discretion and ethics apply to the field. **Chapter 2** considers the sources and nature of law (including substantive and procedural, and criminal and civil), the elements of criminal acts, felonies and misdemeanors, offense definitions and categories, and prevailing methods in use for trying to measure how many crimes are committed. **Chapter 3** examines some of the attempts to explain why people commit crimes (including the classical, positivist, biological, social structure, social process, social conflict, feminist, and environmental criminology theories), as well as field research that has uncovered motivation of persons for committing specific crimes. **Chapter 4** concerns ethics and includes definitions and problems, with emphases on the kinds of ethical problems that confront the police, the courtroom work group, and corrections staff. Included are an ethical decision-making process; legislative enactments; and judicial decisions involving ethics at the federal, state, and local levels.

Part II consists of four chapters that address federal law enforcement and state and local policing in the United States. **Chapter 5** discusses the organization and operation of law enforcement agencies at the federal, state, and local (city and county) levels. Included are discussions of their English and colonial roots, the three eras of U.S. policing, and brief considerations of INTERPOL and the field of private security. **Chapter 6** focuses on the roles and tasks of policing, particularly with respect to the broad areas of training, patrolling, and investigating. After beginning with recruitment, training (including higher education for police), and stressors in policing, we consider patrol functions, use of discretion, community policing, and the work of criminal investigators (including crime scenes, use of informants, and cold cases). **Chapter 7** broadly examines several policing issues, especially those leading to changes in the aftermath of police shootings in a number of U.S. cities: the "guardian versus soldier" mindset, constitutional policing and legitimacy, and procedural justice. Also discussed are police corruption, civil liability, dealing with persons who are mentally ill, and the use of and controversies surrounding selected technologies. **Chapter 8** examines the constitutional rights of the accused (as per U.S. Supreme Court decisions), as well as limitations placed on the police under the Fourth, Fifth, and Sixth Amendments; the focus is on arrest, search and seizure, the right to remain silent, and the right to counsel.

Part III consists of three chapters that generally examine the courts. **Chapter 9** examines court structure and functions at the federal, state, and trial court levels; included are discussions of pre-trial preparations, the actual trial process, the jury system, and some court technologies. **Chapter 10** looks at the courtroom work group, including the judges, prosecutors, and defense attorneys, and legal defenses that are allowed under the law. Finally, **Chapter 11** discusses sentencing, punishment, and appeals. Included are the types and purposes of punishment, types of sentences convicted persons may receive, federal sentencing guidelines, victim impact statements, and capital punishment.

Part IV includes three chapters and examines many aspects of correctional organizations and operations. **Chapter 12** examines federal and state prisons and local jails in terms of their evolution and organization, population trends among persons who are incarcerated (including mass incarceration) and classification, and some technologies. **Chapter 13** considers the "lives inside the walls" of both correctional personnel and those who are incarcerated; included are selected court decisions concerning the legal rights of persons who are incarcerated; administrative challenges with overseeing executions, litigation involving incarcerated persons, drugs, and gangs; and the work of personnel in local jails. **Chapter 14** reviews community corrections and alternatives to incarceration: probation, parole, and several other diversionary approaches. Included are discussions of the origins of probation and parole, functions of probation and parole officers, and several intermediate sanctions (e.g., house arrest, electronic monitoring).

Finally, Part V contains two chapters that consider methods and issues that span the criminal justice system. **Chapter 15** examines juvenile justice—an area in which the treatment of young people convicted of offenses is quite different in terms of its overall philosophy, legal bases, and judicial

process. Included are the history and extent of juvenile crime, risk assessment (of offending), the case flow of juvenile courts, labeling, whether there is a school-to-prison pipeline, youth gangs, and juveniles' legal rights. **Chapter 16** provides an in-depth view of particularly challenging problems and policy issues confronting society and the criminal justice system today: immigration, mass murders, and cybercrime.

NEW TOPICS IN THE FIFTH EDITION

The following substantively new materials have been added to this revised fifth edition:

- New chapter-opening vignettes for each chapter aim to increase student interest and engagement.
- Several new case studies explore current issues in criminal justice and help students dig deeper into the material.
- New You Be the . . . boxes offer a broader range of perspectives for students to take on, such as those of sentencing commissioners and policymakers.

The following are additional chapter-by-chapter additions:

Chapter 1: Updates on cannabis laws and related public opinion polls; recent U.S. Supreme Court decisions; a new Learn by Doing exercise

Chapter 2: Coverage of recent fentanyl legislation; new You Be the . . . boxes; updates on crime and victimization statistics

Chapter 3: Updated to focus strictly on theories of criminality and crime; new You Be the . . . boxes; updates to statistics involving incarcerated females; a new Learn by Doing exercise

Chapter 4: Opening segment on marijuana legalization and use by police recruits and officers; new case studies

Chapter 5: New opening case concerning defunding police movement; updates on federal agencies' personnel, activities; Federal Law Enforcement Training Center (FLETC) and Cybersecurity and Infrastructure Security Agency; organizational charts; Portland police organization chart; updates on county and local agencies; rank hierarchy (figure)

Chapter 6: New chapter opening case; updates on recruit academy training and line-of-duty deaths; caveats concerning investigation as a career goal; use of "ROP" and "PIVOT" by detectives; Going Global feature

Chapter 7: New chapter opening topic: George Floyd's killing and questions flowing from his death as concerns whether police reform is needed, police training and roles should be modified, relevant laws should be changed, federal officers should be deployed in cities, police should be given military gear, and qualified immunity should be restricted or eliminated

Chapter 8: New case studies; summaries of recent Supreme Court decisions governing Fourth Amendment issues

Chapter 9: Updates to court caseload statistics; discussion of bail reform measures; addition of recent U.S. Supreme Court rulings; updates on courtroom technologies and the impact of the COVID-19 pandemic

Chapter 10: Updates on judicial campaign expenditures; new case studies of judicial misconduct; new insanity defense examples; a new Learn by Doing exercise

Chapter 11: Updates on national survey outcomes; new death penalty statistics; updated discussion on victim impact statements; new death penalty research and cases, examples of recent U.S.

Supreme Court rulings on the death penalty; new exoneration case study; a new Learn by Doing exercise

Chapter 12: Opening case study; updates on correctional populations, employment, expenditures, Bureau of Prisons, and prison privatization; First Step Act for federal prisoners; effects of COVID-19 on prison and jail populations; new technology to reduce illicit cell phone use by incarcerated persons; new Practitioner's Perspective (jail sergeant); "prescription" for coping with infectious diseases; Norway prison operation

Chapter 13: Three new case studies; updates on prison and jail demographics; a new Practitioner's Perspective; information on pregnant women in prisons and jails and a new related law on their restraints (shackling); persons suffering from mental illness and the older adults encountering the criminal justice system; a new Going Global

Chapter 14: Updates on probation, parole, and community corrections statistics; new case study on the conditions of probation; recent U.S. Supreme Court rulings; discussion on electronic monitoring technologies; a new Learn by Doing exercise

Chapter 15: Updated discussion of the school-to-prison pipeline and the role of school resource officers; recent gang research; two new Learn by Doing exercises

Chapter 16: Material is nearly all new or updated for this edition concerning its three topics: immigration, mass murders, and cybercrime

TEACHING RESOURCES

edge.sagepub.com/peak5e

This text includes an array of instructor teaching materials designed to save you time and to help you keep students engaged. To learn more, visit sagepub.com or contact your SAGE representative at sagepub.com/findmyrep.

CRIMINAL JUSTICE CHARTER

SAGE founder Sara Miller McCune pioneered publishing programs dedicated to social justice and equality. Over the decades, we have supported research and writing that challenge complacency, critique injustices, and seek to provide insights into how to create a more just and equitable world. We are proud of this legacy, but we can and need to do more.

OUR MISSION STATEMENT

Believing passionately in THE POWER OF EDUCATION to transform the criminal justice system, SAGE CRIMINOLOGY AND CRIMINAL JUSTICE offers compelling content that explores questions of justice, equality, and ethics. With an extensive list written by renowned academics and practitioners, we are a committed partner in helping bring INNOVATIVE APPROACHES to the classroom. Our focus on critical thinking, application, and SOCIAL JUSTICE across the curriculum helps instructors prepare the next generation of criminal justice professionals to create meaningful, REAL-WORLD CHANGE.

OUR COMMITMENT TO DIVERSITY, EQUITY, INCLUSION, AND SOCIAL JUSTICE

SAGE strongly condemns racism, police brutality, and injustice in any form and acknowledges the structural racism in American social institutions, including the criminal justice system, as well as housing, education, health care, and others.

As outlined in our mission statement, we firmly believe that education can help transform the criminal justice system, and we are deeply committed to upholding principles of diversity, equity, inclusion, and social justice in our content. At SAGE, our goal is to ensure that we are doing our part to get instructors and students thinking critically and creatively about issues in the criminal justice system, so they have the skills that they need to address bias, make ethical decisions, and use evidence-based practices to effect change in a system distorted by centuries of structural racism.

Recognizing the need to address structural racism and systemic inequality at every opportunity, this charter codifies our commitment to publishing criminal justice content that has a strong focus on ethics, reform, social justice, inclusivity, and diversity.

What SAGE and our authors are doing to achieve this:

- Continuing to publish content that advocates for criminal justice reform and elevates voices of marginalized groups
- Making SAGE a more attractive publishing house for authors of color and authors from other marginalized groups
- Revising and creating content to meet more diverse and inclusive standards, to connect with current events, critical research, and issues related to social justice to foster learning to dismantle structural racism within the criminal justice system
- Providing instructors with the tools that they need to have what can be difficult and challenging conversations about race and criminal justice in the classroom
- Ensuring our content is accessible to all learners
- Recruiting talent and cultivating a work environment that advances greater inclusion
- Maintaining an equitable approach in our content, accurately and fairly presenting evidence-based practices and research in a way that facilitates critical thinking
- Actively working to use language that is inclusive, respectful, and person-centered and adheres to the SAGE guidelines for bias-free language

In order to hold ourselves accountable for all that we have mentioned here, **we need you**. As the reader, the student, and the instructor, we truly value your feedback, and if there are things you read in this book that are inaccurate, offensive, or need to be clarified, please do not hesitate to connect with us to share your concerns so we can hold true to our mission of educating future professionals and academics. Please reach out to your SAGE sales representative or connect with us at info@sagepub.com.

A WORD ABOUT INCLUSIVE LANGUAGE

In the study of social science disciplines, scholars and researchers continuously struggle to find respectful language to define different identity groups. You have probably noticed that the language used to describe identity groups is ever-changing and that not every member of a given identity group embraces the same language at a given point in time. There are personal, generational, regional, and other types of variations in preferred diversity language. We have also found that different researchers define and measure identity groups in different ways, and the U.S. Census Bureau uses its own, sometimes peculiar language to describe and measure identity groups. With criminology and criminal justice, there may be terms or language used in court cases or decisions, for instance, that is outdated, noninclusive, or just plain offensive.

In this book, we may use the language of the researcher or from court documents so as not to distort their work or that court case. Likewise, when we report on census data or research based on census data, we use the language of the U.S. Census Bureau. That means that, in this book, different terms are used at different points to describe the same identity group.

Throughout this book, we adhere to a style guide to support the latest recommendations from the seventh edition of the *APA Manual*, among other copyediting style manuals, regarding bias-free language. In consideration of this, style guides are meant to be updated over time in order to react to changes in our communities, academia, and our sensibilities. They evolve and are not ever set in stone.

ACKNOWLEDGMENTS

This fifth edition, like its predecessor, is the culmination of dedicated efforts on the part of several key individuals at SAGE Publications, Inc., and they should be recognized. First, this team effort was led by Josh Perigo, acquisitions editor; we greatly appreciate his ongoing commitment to this publishing effort and his astute experience and assistance toward that end. Also providing stellar performances in their roles were Darcy Scelsi, senior content development editor; Amy Harris, copy editor; and Astha Jaiswal, production editor.

—K. J. P. and T. D. H.

REVIEWERS OF THE FIFTH EDITION

Colleen Berryessa, Rutgers University
Julie Brancale, Florida State University
Robert B. Lehmann, John Taylor Community College
Ian Lovestock, Sam Houston State University
Pamela Newell, University of North Georgia
Todd Scott, Schoolcraft College
Haley Slade, Mott Community College
R. Alan Thompson, The University of Southern Mississippi
Jennifer Youzuk, Rutgers University

ABOUT THE AUTHORS

Kenneth J. Peak is emeritus professor and former chair of the Department of Criminal Justice, University of Nevada, Reno, where he was named “Teacher of the Year” by the university’s Honor Society. Following 4 years as a municipal police officer in Kansas, he subsequently held positions as a nine-county criminal justice planner for southeast Kansas; director of a four-state technical assistance institute for the Law Enforcement Assistance Administration (based at Washburn University in Topeka); director of university police at Pittsburg State University (Kansas); acting director of public safety, University of Nevada, Reno; and assistant professor of criminal justice at Wichita State University. He has authored or coauthored 38 additional textbooks (relating to general policing, community policing, criminal justice administration, police supervision and management, and women in law enforcement), two historical books (on Kansas bootlegging and temperance), and more than 60 journal articles and invited book chapters. He is past chair of the Police Section of the Academy of Criminal Justice Sciences and past president of the Western Association of Criminal Justice. He received two gubernatorial appointments to statewide criminal justice committees while residing in Kansas and holds a doctorate from the University of Kansas.



Tamara D. Herold is an associate professor of criminal justice at the University of Nevada, Las Vegas (UNLV). She holds a doctorate from the University of Cincinnati. Her research interests include crime opportunity structures, place management, and crowd violence. She is the recipient of UNLV’s Spanos Distinguished Teaching Award, Faculty Excellence Award, and Greenspun College of Urban Affairs Teaching Award. Her publications propose, extend, or test crime science theoretical models. They also help to translate research findings into practice and policy. Her work has appeared in various outlets, including *Criminology* and *Justice Quarterly*. She has published numerous practitioner-focused research papers, including two problem-oriented policing guides funded by the COPS Office and research monographs, for which she received Herman Goldstein Excellence in Problem-Oriented Policing Awards. Her book *Preventing Crowd Violence* (coedited with Johannes Knutsson) has been translated into two foreign languages. Dr. Herold serves as director of UNLV’s Crowd Management Research Council and conducts research and training for police agencies, major sports leagues, and private industries.



CRIMINAL JUSTICE AS A SYSTEM

The Basics

Chapter 1	Fundamentals of Criminal Justice: Essential Themes and Practices	3
Chapter 2	Foundations of Law and Crime: Nature, Elements, and Measurement	25
Chapter 3	Theories of Criminality and Crime	53
Chapter 4	Ethical Essentials: Doing Right When No One Is Watching	75

This part consists of four chapters. **Chapter 1** briefly examines why it is important to study criminal justice, the foundations and politics of criminal justice, an overview of the criminal justice process and the person experiencing incarceration’s flow through the system, and how discretion and ethics apply to the field.

Chapter 2 considers the sources and nature of law (including substantive and procedural, and criminal and civil), the elements of criminal acts, felonies and misdemeanors, offense definitions and categories, and prevailing methods in use for trying to measure how many crimes are committed.

Chapter 3 examines some of the attempts to explain why people commit crimes (including the classical, positivist, biological, social structure, social process, social conflict, feminist, and environmental criminology theories), as well as field research that has uncovered motivations of people experiencing incarceration for committing specific crimes.

Chapter 4 concerns ethics and includes definitions and problems, with emphases on the kinds of ethical problems that confront the police, the courtroom work group, and corrections staff. Included are an ethical decision-making process; legislative enactments; and judicial decisions involving ethics at the federal, state, and local levels.



©iStockphoto.com/Kimprobable

1

FUNDAMENTALS OF CRIMINAL JUSTICE

Essential Themes and Practices

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 1.1 Describe the foundations of our criminal justice system, including its legal and historical bases and the difference between the consensus and conflict theories of justice.
- 1.2 Compare the crime control and due process models of criminal justice.
- 1.3 Explain the use and importance of discretion throughout the justice system.
- 1.4 Describe the fundamentals of the criminal justice process—the person who is incarcerated’s flow through the police, courts, and corrections components, and the functions of each component.
- 1.5 Explain the wedding cake model of criminal justice.
- 1.6 Discuss the importance of ethics and character in criminal justice.

ASSESS YOUR AWARENESS

Test your knowledge of criminal justice fundamentals by responding to the following six true–false items; check your answers after reading this chapter.

1. Under the U.S. system of justice, people basically join together, form governments (thus surrendering their rights of self-protection), and receive governmental protection in return.
2. Very little, if any, political or discretionary behavior or authority exists in the field of criminal justice; its fixed laws and procedures prevent such influences.
3. All prosecutions for crimes begin with a grand jury indictment.
4. Police make the final decisions concerning the actual crimes with which a suspect will be charged.
5. “Parolee” is the term used to describe one who has been granted early release from prison.
6. The U.S. system of criminal justice is intended to function, and indeed does function in all respects, like a “well-oiled machine.”

Answers can be found on page 401.

“If you’re not outraged, you’re not paying attention.” This was the last Facebook post made by 32-year-old Heather Hayer.¹ On August 12, 2017, Heather traveled to a white supremacist rally in Charlottesville, Virginia, to act as a counter-protester. She was killed when 20-year-old James Alex Fields Jr. drove his Dodge Challenger into the crowd of counterprotesters, injuring a total of 35 people. The incident drew international attention, as well as controversial remarks from then-president Donald Trump, who stated there were “very fine people on both sides.”

Former president Trump was often outspoken about his thoughts on crime and punishment, regularly using social media to express his perception of events or particular criminal justice policies. During his presidential term, Donald Trump tweeted “LAW & ORDER!” more than a dozen times. This aligned with his earlier messages and views, expressed before and during his presidential campaigns, in which he regularly touted the benefits of “tough on crime” policies, including the use of the death penalty and more punitive punishments.² His espoused views stood in stark contrast to the direction of most criminal justice reforms enacted just prior to his presidency meant to alleviate the negative impact of backlogged courts and extreme prison overcrowding.

U.S. presidents' views on crime and criminal justice policy matter a great deal since changes to our justice system are often achieved through laws passed by Congress and signed by the president and through the issuing of presidential executive orders. Trump issued 220 executive orders while in office, many of which dealt with criminal justice policy, including an order aimed at combating transnational drug cartels.³ And while his “tough on crime” stance was well-known, he also signed into law the First Step Act, which reduced prison sentences and improved prison conditions.

As you read this chapter, think about how the criminal law is influenced and how new laws are made and ultimately changed as society and its norms change. What types of laws help to keep residents safe while also protecting taxpayers and persons who are incarcerated from the costs associated with an unnecessarily punitive justice system? What political pressures do lawmakers feel in crafting such laws, and what risks do we face when our justice system does not function as intended?

INTRODUCTION

The U.S. criminal justice system as we know it has existed for more than a century and a half. Interest in crime and our justice system has generated thousands of television series and movies that examine how and why people commit crimes, how the justice system responds, the roles of people who work within our system, various punishments for criminal behavior, and our protections under the Bill of Rights. Some are fictional (*The Wire*, *CSI*, *Law & Order*, *The Shield*, *Sons of Anarchy*, and *NCIS*), while others are based on true stories or follow real-life events (*Tiger King*, *American Crime Story*, *The First 48*, *Making a Murderer*, *Unsolved Mysteries*, and *Cops*). These programs have contributed to society's general knowledge about our justice system, but fictional stories and dramatic editing can produce misleading or inaccurate information.

The criminal justice system is a critical part of our free, democratic society, and for that reason alone, we need to study and understand it. It serves to define our culture and how we live. It also influences the way in which we interact with the rest of the world. The terrorist attacks that occurred on September 11, 2001, changed the way Americans felt about homeland safety and security. The events of 9/11 made people more aware that crime is an international problem. Crime regularly transcends national borders, and the way our federal, state, and local criminal justice agencies must organize and plan to deal with crime has changed in many ways, as this book will show.

Another reason for carefully studying the criminal justice system is that, odds are, you and most Americans will be affected by crime during your lifetime. Just over 8 million serious criminal offenses are reported to the Federal Bureau of Investigation (FBI) each year, with about 1.2 million of them involving violence and 6.9 million involving damaged or stolen property.⁴ Millions more offenses occur that are less serious in nature, and many crimes go unreported. Given the far-reaching and significant impact of criminal activity, Americans should understand how offenders are processed through the three major components of our system—police, courts, and corrections—and know their legal rights.

Finally, by studying the criminal justice system, you will understand how your tax dollars support criminal justice in federal, state, and local governments (which now spend over \$300 billion annually and employ over 2.4 million persons).⁵ A tremendous amount of resources are required to support our criminal justice system. But as the French novelist Alain-René Lesage stated several centuries ago, “Justice is such a fine thing that we cannot pay too dearly for it.”⁶ This chapter provides an overview of the foundations of the criminal justice system. You will learn about the legal and historical bases of the system, the crime control and due process models of crime, the stages of the criminal justice process, a four-tier model used to categorize and describe different types of criminal cases, and how discretion and ethics permeate the system.

FOUNDATIONS OF CRIMINAL JUSTICE: LEGAL AND HISTORICAL BASES

The foundation of our criminal justice system is the criminal law: laws that define criminal acts and how such acts will be punished. Indeed, enforcing these laws is what sets in motion the entire criminal justice process. But like most things in our dynamic society, the law is not static. Enactment of new criminal laws and changes to those laws are almost always triggered by social, political, and economic changes. New ways to commit crimes are discovered, new illegal drugs make their way to the marketplace, new weapons and technology (for criminals and police alike) come on the scene, and suddenly, lawmakers and law enforcement officials find themselves needing new tools to prevent and prosecute crimes. We turn first to how the law changes and the historical principles that still guide—and sometimes challenge—that process.

The Criminal Law: How It Changes and How It Changes the System

Kalief Browder was 16 years old when he was accused of stealing a backpack. He was detained at Rikers Island and spent nearly 2 years in solitary confinement, despite never being tried or convicted for his alleged crime. His case faced extreme delays in the clogged Bronx court system. Browder was released after 3 years due to insufficient evidence, but some have argued the abuse he endured during detention caused him to commit suicide at 22 years old in 2015.⁷ Subsequently, President Barack Obama signed an executive order to ban the solitary confinement of juveniles in federal prisons in 2016.

In the wake of similar and numerous news reports indicating abuses resulting from an overtaxed criminal justice system, many lawmakers and criminal justice officials have been exploring ways to divert persons experiencing incarceration away from traditional system responses. Attempts to find alternatives to arrest, prosecution, and incarceration have included providing treatment to help people experiencing the criminal justice system deal with underlying issues that cause criminal behavior (e.g., mental health or substance abuse issues), as well as decriminalizing nonviolent, low-level crimes (consider the discussion of marijuana law changes that follows later in this chapter). You will learn more about recent diversion laws and programs throughout this book.

The search for alternative approaches to crime and justice indicates a significant shift away from the many “tough-on-crime” laws that were enacted in the 1990s. Most politicians wanted to appear tough on crime, particularly following high-profile violent cases, like the kidnapping, sexual assault, and murder of 12-year-old Polly Klaas. Polly was abducted from her home in Petaluma, California, by Richard Allen Davis in 1993. California lawmakers responded just months after Davis confessed to his crimes by proposing the nation’s first **three-strikes law**—a seemingly simple solution giving people committing violent crimes only two chances to turn themselves around. If they did not and they committed another crime, the third crime would be the final “strike” and the state could lock them up and throw away the key for 25 years to life.⁸ California voters overwhelmingly approved the measure, and within 2 years, more than 20 states and the federal government had done the same.⁹

Supporters predicted the new law would curb crime and protect society by incapacitating the worst offenders for a long period of time, while opponents argued that offenders facing their third strike would demand trials (rather than plea bargain) and send prison populations skyrocketing.¹⁰

The law that was finally enacted in California was vastly different from what was originally intended—and with many negative and unanticipated repercussions.¹¹ According to *The New York Times*, the law was unfairly punitive and created a cruel and unfair criminal justice system that lost all sense of proportion, doling out life sentences disproportionately to Black defendants. Under the statute,



Kalief Browder, of the Bronx, New York, was sent to Rikers Island jail at the age of 16, accused of stealing a backpack. He would eventually spend 3 years at Rikers, two of which were in solitary confinement. Two years after his release, Browder hanged himself at his mother’s home—the result, some say, of mental, physical, and sexual abuse sustained while in custody.

the third offense that could result in a life sentence could be any number of low-level felony convictions, like stealing a jack from the back of a tow truck, shoplifting a pair of work gloves from a department store, pilfering small change from a parked car, or passing a bad check.¹² Some research suggests there is greater public support of punitive policies, like the three-strikes law, if Black defendants, rather than white defendants, are disproportionately affected by such policies.¹³ This finding might help explain the initial broad public support for the law¹⁴ despite strong objections from justice-focused organizations, including the American Civil Liberties Union.¹⁵

Studies of the California law found that prisoners added to the prison system in 1 decade's time would cost taxpayers an additional \$8.1 billion in prison and jail expenditures.¹⁶ Furthermore, persons incarcerated after three strikes and sentenced for nonviolent offenses would serve 143,439 more years behind bars than if they had been convicted prior to the law's passage.¹⁷ A nationwide study of three-strikes laws conducted about a decade after many states had adopted the law found no credible evidence to suggest the law reduced crime.¹⁸ Nearly 19 years after adoption of the three-strikes law, in November 2012 Californians voted to soften the sentencing law and to impose a life sentence only when the third felony offense is serious or violent, as defined in state law. The law also authorizes the courts to resentence thousands of people who were sent away for low-level third offenses and who present no danger to the public,¹⁹ and it provides redress to incarcerated persons who are mentally ill—who were estimated to compose up to 40% of those incarcerated persons with life sentences under the three-strikes rule.²⁰

As you will read throughout this book, the adoption of laws and the processing of cases through our justice system is heavily influenced by politics. Many lawmakers and other politicians want to do what is right for society, but their decisions can also be influenced by their desire to be reelected, made with limited or inaccurate information, or prompted by a “knee-jerk” response to a high-profile event, like Kalief Browder's detention experience or Polly Klaas's murder.

The Browder and Klaas cases provide excellent illustrations of the national impact of injustice and crime, the legislative process, and the democratic system of criminal justice that exists to deal with persons committing illegal offenses. These cases also prompt us to consider questions about the interaction of government and the justice system: What is the source of legislative and law enforcement powers? How can governments presume to maintain a system of laws that effectively governs its people and, moreover, a legal and just system that exists to punish persons who willfully violate those laws? We now consider those questions.

The Consensus Versus Conflict Debate

The criminal justice system plays a central role in our democratic society. We enact criminal laws to maintain order and to punish those who violate the democratically decided rules. But is order maintained through consensus—agreement—or is it preserved through conflict, the exercise of power by certain groups over others? This debate is important because it forces us to look at how laws are created, to whom they are meant to apply, and the impact of our justice system when considering these competing perspectives.

Consensus Theory of Justice

Our society contains innumerable lawbreakers—many of whom are more violent than Richard Allen Davis. Most of them consent to police power in a cooperative manner, without challenging the legitimacy of the law if arrested and incarcerated. Nor do they challenge the system of government that enacts the laws or the justice agencies that carry them out. The stability of our government for more than 200 years is a testament to the existence of a fair degree of consensus as to its legitimacy.²¹ Thomas Jefferson's statements in the Declaration of Independence are as true today as when he wrote them and are accepted as common sense:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit

of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it.

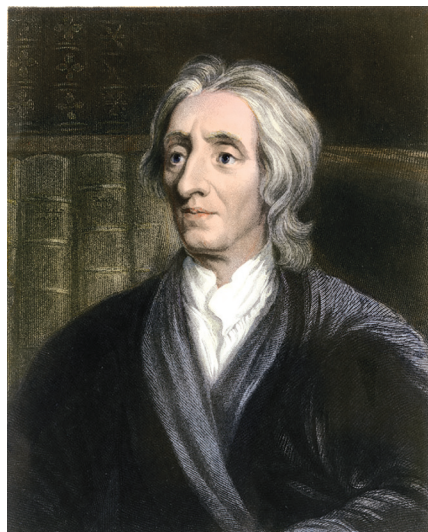
The principles of the Declaration are almost a paraphrase of John Locke's *Second Treatise on Civil Government*, which justifies the acts of government based on Locke's social contract theory. People, according to Locke, were created by God to be free, equal, and independent, and to have inherent inalienable rights to life, liberty, and property. Each person had the right of self-protection against those who would infringe on these liberties. In Locke's view, although most people were good, some would be likely to prey on others, who in turn would constantly have to be on guard against those who might harm them. To avoid this brutish existence, people joined together, forming

governments to which they surrendered their rights of self-protection. In return, they received governmental protection of their lives, property, and liberty. As with any contract, each side has benefits and considerations; people give up their rights to protect themselves and receive protection in return. Governments give protection and receive loyalty and obedience in return.²²

Locke believed the chief purpose of government was the protection of property. Properties would be joined together to form a commonwealth. Once the people unite into a commonwealth, they cannot withdraw from it, nor can their lands be removed from it. Property holders become members of that commonwealth only with their express consent to submit to its government. This is Locke's famous theory of tacit consent: "Every Man . . . doth hereby give his tacit consent, and is as far forth obliged to Obedience to the Laws of the Government."²³ Locke's theory essentially describes an association of landowners.²⁴ Another theorist connected with the social contract theory is Thomas Hobbes, who argued that all people were essentially irrational and selfish. He maintained that people had just enough rationality to recognize their situation and to come together to form governments for self-protection, agreeing "amongst themselves to submit to some Man, or Assembly of men, voluntarily, on confidence to be protected by him against all others."²⁵ Therefore, they existed in a state of consensus with their governments.

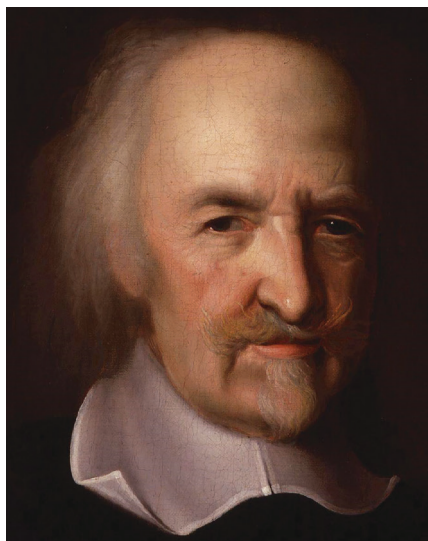
The **consensus theory of justice** assumes that most citizens in society share similar values and beliefs. It is based on the premise that even a diverse population of individuals hold the same morals or views concerning what should be labeled as "right" or "wrong" behavior. These views are reflected in the law. Society comes together to protect itself from those who threaten the well-being of others by passing laws that prohibit harmful behavior and outlining the punishments for engaging in these acts.

Consensus theory acknowledges that perspectives and values can change over time. Some behaviors that were previously illegal are legal today. For example, adultery, same-sex marriage, drinking alcohol, and conducting business on Sundays were all labeled as criminal activity in the past.²⁶ Further, what is illegal today might be deemed legal tomorrow. Public attitudes toward marijuana, also called cannabis, have shifted dramatically. In 2000, only 31% of Americans supported the legalization of marijuana, but recent polls show that more than two thirds (68%) now support it.²⁷ This shift in public opinion has resulted in the legalization or decriminalization of marijuana use in numerous states, as depicted in Figure 1.1. While most Americans (more than 67%) now live where medical marijuana use is legal, public support has also prompted changes to recreational marijuana use laws. In 2012, Colorado was the first state to legalize recreational marijuana. As of January 2022, 18 states and Washington, D.C., had legalized recreational marijuana use, while 13 states had decriminalized recreational marijuana use.²⁸



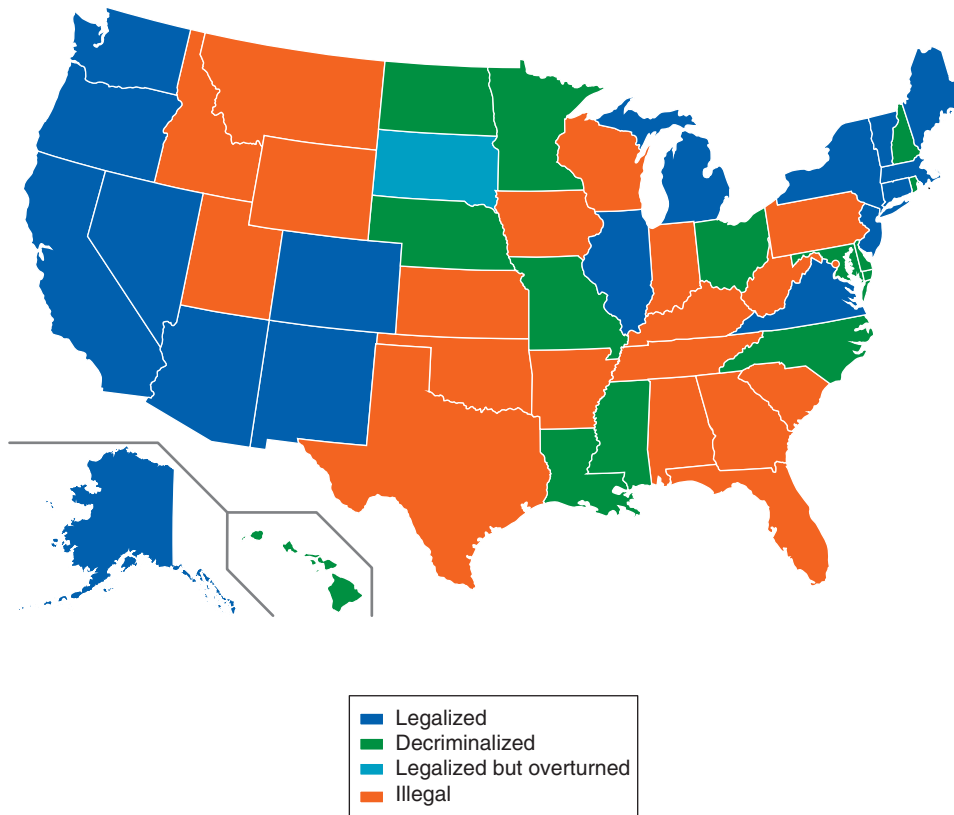
John Locke, an English philosopher and physician and one of the most influential thinkers of his day, developed two influential theories concerning government and natural law: social contract and tacit consent.

Sir Godfrey Kneller



Another English philosopher and social contract theorist, Thomas Hobbes, believed in individual rights and representative government.

John Michael Wright

FIGURE 1.1 ■ Cannabis Laws in the United States, 2022**Going Global 1.1****Marijuana Legalization Around the World**

In 2013, Uruguay (in South America) became the first country in the world to legalize cannabis for recreational use nationwide. Canada followed suit in 2018 and became the first major world economy to legalize recreational marijuana. Although British Columbia's minister of public safety noted there are still many unknown health risks associated with the drug, there was broad public support across the country for marijuana legalization. News reporters shared stories of Canadians waiting in line for hours to buy the first state-approved marijuana cigarettes. Although medical marijuana had been legal in Canada since 2001, the new legislation allows adults to possess and carry up to 30 grams of dried cannabis, or enough to roll about 60 average joints. Most provinces also permit up to four homegrown marijuana plants per household.

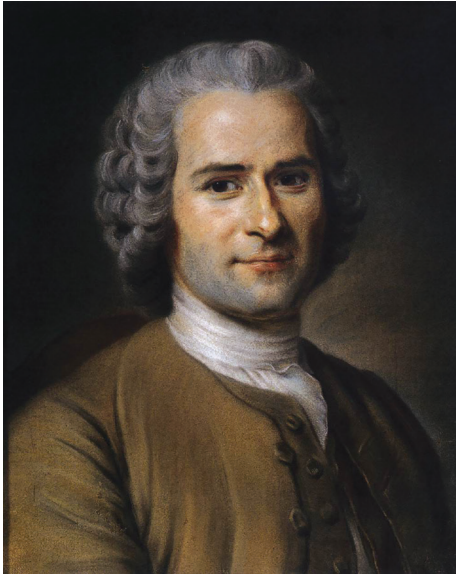
Debates concerning legalization continue as more countries consider whether to decriminalize marijuana and how to regulate the drug's growth, distribution, and sale. Even in Canada, legalization debates continue. Dried cannabis can be purchased from government retailers in physical stores and online, but the federal government delayed approval of sales of cannabis edibles (marijuana infused food and liquid) for an additional year. The government is allowing the country's 13 provinces and territories to establish their own rules, creating discrepancies in regulations across the country. Physical and mental health risks, dangers of intoxication while driving, benefits of projected tax revenues, and the pardoning of previous drug offenders are among many issues being discussed as part of a larger national conversation.

Source: Adapted from Dan Bilefsky, "Legalizing Recreational Marijuana, Canada Begins a National Experiment," *New York Times*, October 17, 2018, <https://www.nytimes.com/2018/10/17/world/canada/marijuana-pot-cannabis-legalization.html>.

Conflict Theory of Justice

Jean-Jacques Rousseau, a conflict theorist, differed substantively from both Hobbes and Locke, arguing that “man is born free, but everywhere he is in chains.”²⁹ Like Plato, Rousseau associated the loss of freedom and the creation of conflict in modern societies with the development of private property and the unequal distribution of resources. Rousseau described conflict between the ruling group and the other groups in society, whereas Locke described consensus within the ruling group and the need to use force and other means to ensure the compliance of the other groups.³⁰

The **conflict theory of justice** assumes there will always be competing interests and viewpoints among members of society. People’s beliefs can differ greatly and, as such, consensus is not possible.



Jean-Jacques Rousseau, a Genevan conflict theorist, argued that while the coexistence of human beings in equality and freedom is possible, it is unlikely that humanity can escape alienation, oppression, and lack of freedom: “Everywhere he is in chains.”

Maurice Quentin de La Tour

Women’s right to abortion has been heavily debated since it was first made legal across the country following the 1973 U.S. Supreme Court ruling in *Roe v. Wade*.³¹ In 1992, the U.S. Supreme Court generally confirmed the federal constitutional protections of abortion rights in *Planned Parenthood v. Casey*,³² but, in 2022, took up the issue again in *Dobbs v. Jackson Women’s Health Organization*.³³ By a vote of 6–3, the Court reversed its position and held that the U.S. Constitution does not confer a right to abortion. Yearly surveys reveal that public opinion regarding abortion has remained relatively stable over time.³⁴ Like our U.S. Supreme Court Justices, the public remains divided on this issue.

Since people do not share a common belief in what should or should not be legal, conflict theory maintains that laws reflect the interests of the most powerful people in society. Characteristics of certain groups make them more or less likely to be subjected to laws and criminal sanctions. These characteristics include age, class, race, and gender, as well as combinations of these attributes. The difference in laws governing crack cocaine and powder cocaine use is an example commonly used to support conflict theory. Prior to the Fair Sentencing Act of 2010, the penalty for possession of 5 grams of crack cocaine (commonly associated with people who are poor, underrepresented, and inner-city drug users) was a 5-year mandatory prison sentence, but a person in possession of powder cocaine (commonly associated with wealthy white people who are drug users) would be subject to the same penalty only if the individual was carrying 500 grams of the drug.³⁵

CRIME CONTROL AND DUE PROCESS: DO ENDS JUSTIFY MEANS?

Before learning about the specifics of the criminal justice process, it is important to consider how our system can serve the two seemingly competing goals of controlling crime and protecting the rights of persons accused of crime. How do we operate a system that is tough on crime and persons committing criminal acts while preserving the constitutional rights of those being accused? Crime control is an obvious and understandable goal for any society, but in a country founded on the ideals of freedom, liberty, and equality, we must be concerned about violating individual rights in our quest to achieve justice—we must ask whether the ends justify the means. For example, if the police illegally search a house and find clear evidence of several crimes, should the state be able to use that evidence to convict someone, or should the evidence be excluded because the police violated the defendant’s constitutional rights in the pursuit of crime control?

You will become familiar with these debates and conflicting objectives within the justice system as you learn more about the criminal justice process and the laws that govern police actions and ethics. By considering two different approaches to our criminal justice system, we can better understand how those accused of crimes move through the system and the different results—intended and otherwise—we might expect. In 1968, Herbert Packer described the two now-classic models of the criminal justice process in terms of two competing value systems: crime control and due process (see Table 1.1).³⁶

TABLE 1.1 ■ Packer’s Crime Control and Due Process Models

	Crime Control Model	Due Process Model
Views criminal justice system as an . . .	Assembly line	Obstacle course
Goal of criminal justice system	Controlling crime	Protecting rights of defendants
Values emphasized	Efficiency, speed, finality	Reliability
Process of adjudication	Informal screening by police and prosecutor	Formal, adversarial procedures
Focuses on . . .	Factual guilt	Legal guilt

The **crime control model** follows a highly traditional philosophy that Packer likened to an assembly line. The primary goal of this model is to deter criminal conduct and thus protect society. The accused is presumed guilty, police and prosecutors should have extensive freedom to exercise their own discretion (judgment) in the interest of crime control, legal loopholes should be eliminated, and persons committing a criminal offense should be punished swiftly. This model views crime as a breakdown of individual responsibility; as such, only swift and certain punishment will deter and control crime.

In contrast, the **due process model**—likened to an obstacle course by some authors—focuses on fairness as its primary goal. In this model, criminal defendants should be presumed innocent, the courts’ priority is protecting the constitutional rights of the accused, and law enforcement officials—the police and prosecutors—must be held in check to preserve freedom and civil liberties for all Americans. As such, this model is designed to present “obstacles” for government actors at every stage, slowing down the process and affording an opportunity to uncover mistakes made in the pursuit of justice. This view also stresses that crime is not a result of individual moral failure but is driven by social influences (such as unemployment, racial discrimination, and other factors that disadvantage the poor); thus, courts that do not follow this philosophy are fundamentally unfair to these defendants. Furthermore, rehabilitation aimed at individual problems is embraced as a strategy to prevent future crime.

Packer indicated that neither of these models would be found to completely dominate national or local crime policy.³⁷ To argue that one of these models is superior to the other requires an individual to make a value judgment. How much leeway should be given to the police? Should they be allowed to “bend” the laws to get criminals off the streets? Do the ends justify the means? Or should criminal justice officials be required to follow rules and be held to higher standards than criminals? How important is it that our system be seen as fair and impartial?

YOU BE THE . . . LEGISLATOR

Gun violence is a major concern in the United States. In addition to recent school shootings and mass shootings at public events and workplaces, many communities (particularly disadvantaged communities) suffer from high numbers of gun-related violent crimes. We do not have a complete database of all U.S. gun violence incidents, but some estimates suggest that firearms are involved in more than 22,000 suicides, just under 13,000 homicides, and almost 500 unintentional deaths in America annually. Further, the average number of injuries per year involving guns is almost 100,000.

Concerns over gun violence must be balanced with the rights afforded by the Second Amendment of our U.S. Constitution, which reads, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” While there is considerable debate regarding the amendment’s intended scope, lawmakers across the country are considering whether to enhance citizens’ rights to bear arms (e.g., by supporting laws that allow citizens to openly carry firearms) or to introduce legislation focused on enhancing gun control (e.g., by requiring background checks to purchase firearms).

1. Do laws that establish background check requirements, such as those proposed by the Bipartisan Background Checks Act of 2019, follow the consensus or conflict theory of justice?

2. What recent news stories might make lawmakers more likely to introduce gun rights or gun control legislation?
3. Does gun control legislation align more closely with the crime control model or the due process model?

Sources: Everytown for Gun Safety, “Gun Violence in America,” <https://everytownresearch.org/gun-violence-america/>; H.R.8—Bipartisan Background Checks Act of 2019, 116th Congress (2019–2020), <https://www.congress.gov/bill/116th-congress/house-bill/8>.

DISCRETION: MAKING AND APPLYING THE LAW

After considering the two competing criminal justice models, you may wonder why the two models are even possible—in other words, how can criminal justice professionals follow different procedures in different situations when our nation functions under the rule of law and due process? The answer is that players throughout the system exercise **discretion**, making decisions based on their own judgments in particular situations. As you consider the processes and cases presented throughout this book, you will see discretion applied in many ways.

For example, lawmakers understand they cannot anticipate the range of circumstances surrounding each crime or create laws that reflect all local attitudes and priorities concerning crime control. Further, they cannot possibly enact enough laws to cover all potentially harmful behavior, with exceptions described for every possible scenario where strict application of the law would result in injustice. The report of the President’s Commission on Law Enforcement and Administration of Justice (published in 1967) made a pertinent comment in this regard:

Crime does not look the same on the street as it does in a legislative chamber. How much noise or profanity makes conduct “disorderly” within the meaning of the law? When must a quarrel be treated as a criminal assault: at the first threat, or at the first shove, or at the first blow, or after blood is drawn, or when a serious injury is inflicted? How suspicious must conduct be before there is “probable cause,” the constitutional basis for an arrest? Every [officer], however sketchy or incomplete his education, is an interpreter of the law.³⁸

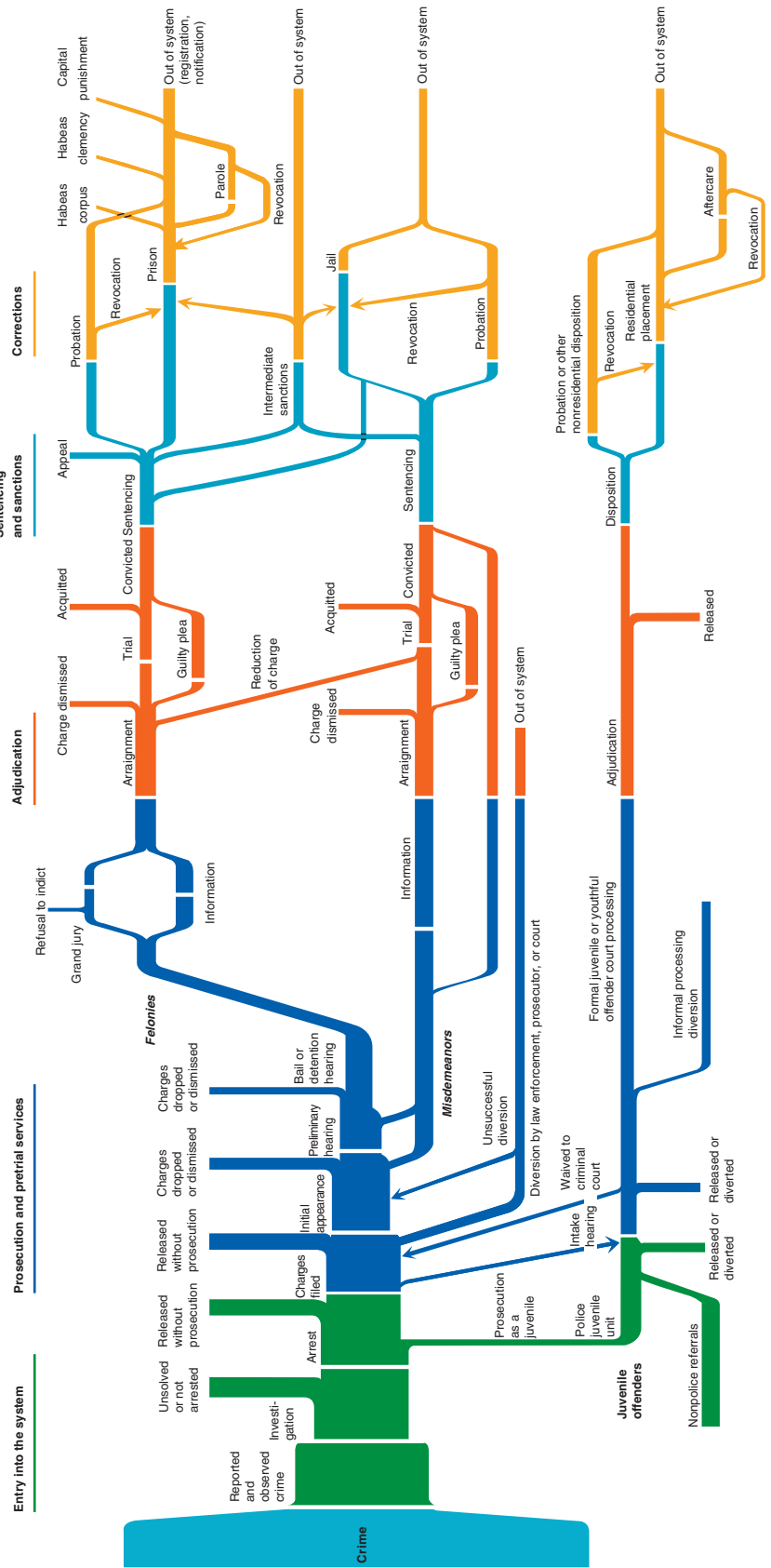
Accordingly, enacting laws is just a first step, and persons charged with the day-to-day response to crime must exercise their own judgment within the limits set by those laws. Basically, they must decide whether to act, which official response is appropriate, and how the community’s attitude toward specific types of criminal acts should influence decisions. You will further explore the context surrounding the following examples of discretion throughout this book:

- Police officers exercise extensive discretion in deciding whether to stop, search, or arrest someone.
- Prosecuting attorneys decide whether to bring criminal charges against an arrestee, thus making one of the most important judgment calls in the system.
- Judges exercise discretion in setting or denying bail and in imposing sentences (even with sentencing guidelines).
- Corrections officials decide where to house persons convicted of crimes, how to discipline them for rules violations, and whether to grant them early release on parole.

THE CRIMINAL JUSTICE PROCESS: AN OVERVIEW OF FLOW AND FUNCTIONS

What follows is a brief description of the **criminal justice flow and process** in the United States. Figure 1.2 shows a flowchart of that system and summarizes the major stages of the process, including entry into the criminal justice system, prosecution and pretrial services, adjudication, sentencing and sanctions, and corrections. Note that *all* discussions in this book are based on the people and processes included in the depicted sequence of events.

FIGURE 1.2 ■ The Sequence of Events in the Criminal Justice System



Source: Adapted from President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (U.S. Government Printing Office, 1967). This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of lines are not intended to show actual size of caseloads.

The Pathway Through the Process for the Person Experiencing the Criminal Justice System

As we follow the person experiencing the criminal justice system's path through the process, note that Figure 1.2 also depicts vertical pathways out of the criminal justice system. That is because many crimes fall out of the system for one of a variety of reasons—the crime is not discovered or reported to the police (the so-called dark figure of crime); no perpetrator is identified or apprehended; or, in some instances, a suspect is arrested, but the police release the suspect from custody if they later determine that no crime was committed.

Law Enforcement: Investigation/Arrest

The flowchart in Figure 1.2 begins with “reported and observed crime.” Police agencies learn about crime from the reports of victims or other citizens, from discovery by a police officer in the field, from informants, or from investigative and intelligence work. Once a law enforcement agency has established that a crime has been committed, the perpetrator must be identified and apprehended before the case can proceed through the system. Sometimes the person committing the crime is apprehended at the scene, but in other cases, the police must find the perpetrator through an investigation. Either way, the first formal step for most persons committing a crime in the criminal justice system is when the police take a suspect into custody for purposes of charging that person with a crime, known as an **arrest**.

PRACTITIONER'S PERSPECTIVE

POLICE OFFICER



Name: Kevin Wilmott

Position: Police Officer

Location: Southern California

What advice would you give to someone either wishing to study, or now studying, criminal justice and wanting to become a practitioner in this position? My biggest advice for students who are pursuing a career in law enforcement is to start looking into going on ride-alongs with agencies that they're interested in working for. A lot of times, agencies will offer civilian ride-alongs. Just call the department and ask if you can go on a ride-along. Because that's the best way to really see if this is something that you're interested in. You can watch it on TV, you can read about it in a book, but until you actually go out in the field and shadow an officer and see what his or her “day in the life” is like, you don't really have a good idea. So I think the biggest thing is to go on ride-alongs and experience them firsthand.

Also, if you're not quite the age yet—typically the age is 21 for most agencies to be a police officer—a really good idea that I recommend is to look at civilian jobs in a police department. I started as a police dispatcher for 2 years. A lot of times there are positions for cadets, traffic or parking

enforcement, dispatchers, records, whatever it may be. There are definitely civilian jobs where a lot of times the minimum age requirement is 18. So between 18 and 21 you can do that, and that actually gets you a foot in the door, as you get to see what it's like to work at a police department, and you can get to know the department and the community that you want to eventually work for as a police officer. It helps build your name and reputation with the department.

In general, what does a typical day look like for a practitioner in this position? Granted, our days are never quite routine, and every day is different. But typically, a day in the life for me, for the most part, would start with going to briefing. In our briefing, we go over what's going on in our community, what to look out for, if there have been any recent crimes or crime trends that we need to be aware of. We also get our assignments, which area of the city we'll be working, what car we're going to be in. After briefing, we get our vehicle ready, and that means putting all of our equipment in the patrol car, and then we go out and begin our shift. I currently work nights and weekends, so I personally am looking for impaired drivers. Some officers look out for drug users or traffic enforcement, and some are interested in working with quality-of-life issues with transiency, loitering, and things of that nature. But I personally am interested in DUI enforcement. So a lot of times, when I'm not responding to a call for service, I'm out on the roads looking for people that may be impaired. And every so often, we get dispatch for calls for service. Then at the conclusion of my shift, I gas up the vehicle, put it away, and take all the gear out of it. I also make sure I'm caught up on all my reports because there's definitely a lot of report writing involved. The quieter hours are around 3 to 5 in the morning, so those are the times I try to catch up on all my reports.

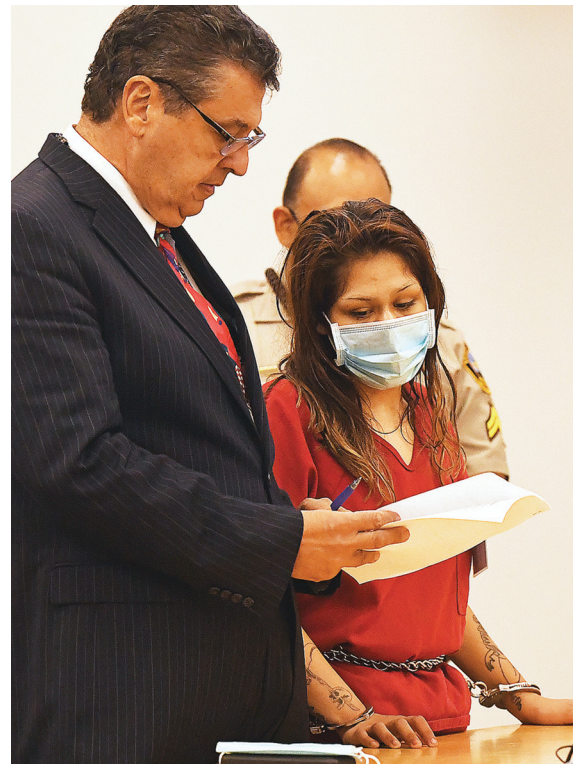
Prosecution and Pretrial Activities

Next, we enter the **prosecution** and pretrial services phase of the process—and the realm of the powerful individuals who “control the floodgates” of the courts process. After an arrest, police present information concerning the case and the accused (typically in the form of an official offense/arrest report) to the prosecutor, who will decide—at their discretion—if formal charges will be filed with the court. If no charges are filed, the accused must be released. The prosecutor can also elect, after initially filing charges, to drop charges (*nolle prosequi*) if they determine the probable cause and/or evidence in the matter is weak. (Probable cause, discussed later in this book, is a legal term referring to information that would lead a reasonable person to believe that a person has committed, is committing, or is about to commit a crime.) Furthermore, in some jurisdictions, defendants—often those without a prior criminal record—may be eligible for diversion from prosecution if they complete a specific condition, such as drug treatment. Successful completion of the conditions may result in charges being dropped or the record of the crime being expunged (meaning to legally strike or erase).

Initial Appearance

Persons charged with a crime must be taken for an initial appearance before a judge or magistrate without unnecessary delay (the amount of time is typically specified in the state's statutes or in municipal ordinances). There, the judge will inform the accused of the charges and decide whether there was probable cause for the police to make an arrest. If the offense is not very serious, the determination of guilt and assessment of a penalty may also occur at this stage.

Often, a defense attorney is also assigned at the initial appearance. All defendants who are prosecuted for serious crimes have a right to be represented by an attorney. If the court determines the defendant is indigent and cannot afford such representation, the court will assign counsel at the public's expense.



Jonissa Jones, looks at a document with her attorney, Ray Hanna of the Yuma County Public Defender's Office. Jones was charged with the murder of Derek Runnion and pleaded guilty in April 2022. Under the U.S. system of justice, all criminal defendants prosecuted for serious crimes have the right to be represented by an attorney.

Randy Hoeft/The Yuma Sun via AP

A decision about whether to release the defendant on bail or some other conditional release may also be made at the initial appearance. The court considers factors such as the seriousness of the charge; whether the defendant is a flight risk; and if they have a permanent residence, a job, and family ties. If the accused is likely to appear at trial, the court may decide they should be released on recognizance (often termed “ROR,” meaning that the defendant is released without having to provide bail, upon promising to appear and answer the criminal charge) or into the custody of a third party after the posting of a financial bond.

Preliminary Hearing or Grand Jury

The next step is to determine whether there is probable cause to believe the accused committed the crime and whether they should be tried. Depending on the jurisdiction and the case, this determination is made in one of two ways: through a preliminary hearing or through a grand jury. In a preliminary hearing, a judge determines if there is probable cause to believe the accused committed the crime. If so, the case moves forward to trial, also known as “binding the defendant over” for trial. If the judge does not find probable cause, the case is dismissed.

In other jurisdictions and cases, the prosecutor presents evidence to a grand jury, which decides if there is sufficient evidence to bring the accused to trial. If the grand jury finds sufficient evidence, it submits to the court an indictment, a written statement of the essential facts of the offense charged against the accused. Misdemeanor cases and some felony cases proceed by the issuance of an “information,” which is a formal, written accusation submitted to the court by a prosecutor (rather than an indictment from the grand jury). In some jurisdictions, indictments may be required in felony cases. Grand juries are discussed later in this book.

Adjudication

Next, in the middle of the flowchart shown in Figure 1.2, is the **adjudication** process. The adjudication process allows the defendant to respond to the charges brought against them, requires the government to prove its case (if the defendant claims they are not guilty), and allows a judge or jury to decide whether the defendant is legally guilty or not guilty. Once an indictment or information has been filed with the trial court, the accused is scheduled for arraignment.

Arraignment

At the arraignment, the accused is informed of the charges, advised of the rights of criminal defendants, and asked to enter a plea to the charges. Generally, defendants enter a plea of guilty, not guilty, or *nolo contendere* (no contest).

If the accused pleads guilty or *nolo contendere* (accepts penalty without admitting guilt), the judge may accept or reject the plea. If the plea is accepted, the defendant has, in effect, given up their constitutional right to a trial, no trial is held, and sentencing occurs at this proceeding or soon after. But contrary to popular media depictions, not guilty pleas and trials are very rare; approximately 95% of criminal defendants plead guilty because of plea bargaining between the prosecutor and the defendant.

Trial

If the accused pleads not guilty or not guilty by reason of insanity, they are basically forcing the government to prove its case—to prove the defendant’s guilt beyond a reasonable doubt. A person accused of a serious crime is guaranteed a trial by jury but may request a bench trial where the judge alone, rather than a jury, will hear both sides of the case. In both instances, the prosecution and the defense are permitted to present physical evidence and question witnesses, while the judge decides on issues of law. The trial results in an **acquittal** (not guilty) or a **conviction** (guilty) on the original charges or on lesser included offenses.

Sentencing and Sanctions, Generally

After a conviction, a sentence is imposed. Except for capital cases where the death penalty is being sought and the jury decides the punishment, the judge determines the sentence.

In arriving at an appropriate sentence, a sentencing hearing may be held at which time evidence of **aggravating** or **mitigating circumstances** is considered (aggravators are elements that tend to increase the incarcerated person's blame, such as use of torture; mitigators tend to reduce blame, such as youthfulness and lack of prior criminal record). Here, the court may rely on presentence investigations by probation agencies and consider victim impact statements (a written or oral statement by the victim concerning the pain, anguish, and financial devastation the crime has caused).



The U.S. Supreme Court has held that trial juries may hear and consider victim impact statements (concerning such factors as the pain, anguish, and suffering the defendant's crime has caused) when making sentencing decisions.

Sean D. Elliot/The Day via AP

The sentencing choices that may be available to judges and juries include one or more of the following:

- Death penalty (only in first-degree murder cases and only in certain states)
- Incarceration in a prison (for sentences of a year or longer), a jail (for sentences of up to a year), or another confinement facility
- Probation: allowing the convicted person to remain at liberty but subject to certain conditions and restrictions such as drug testing or drug treatment
- Fine: applied primarily as penalties in minor offenses
- Restitution: requiring the offender to pay compensation to the victim
- Intermediate **sanction** (used in some jurisdictions): an alternative to incarceration that is considered more severe than straight probation but less severe than a prison term (e.g., boot camps, intense supervision often with drug treatment and testing, house arrest and electronic monitoring, and community service)

Appellate Review

Following trial and sentencing, a defendant may appeal their conviction or sentence by requesting that a higher court review the arrest and trial (a process known as appellate review). The appellate process provides checks on the criminal justice system by ensuring that errors at trial (except for those considered to be “harmless”) did not adversely affect the fairness of trial processes and the defendant's

constitutional rights. In death penalty cases, appeals of convictions are automatic. In other cases, the appellate court has sole discretion over whether to review the case.

Corrections

Figure 1.2 shows the next phase into which the person experiencing the criminal justice system enters is corrections. Persons convicted of a criminal offense who are sentenced to incarceration usually serve time in a local jail or a state prison. Persons convicted of a criminal offense who are sentenced to less than 1 year generally go to jail; those sentenced to more than 1 year go to prison.

An incarcerated person may become eligible for parole after serving a portion of their **indeterminate sentence** (a range, such as 5–10 years). **Parole** is the conditional release of an incarcerated person before their full sentence has been served. The decision to grant parole is made by an authority such as a parole board, which has power to grant or revoke parole (i.e., return the parolee to prison) or to discharge a parolee altogether. In some jurisdictions, incarcerated persons serving what is called a **determinate sentence**—a fixed number of years in prison—will not come before a paroling authority because each incarcerated person is required to serve out the full sentence prior to release, less any earned “good time credits” (a reduction in the time served in jail or prison due to good behavior, participation in programs, and other activities).

If released by a parole board or through mandatory release, the parolee will be under the supervision of a parole officer in the community for the balance of their unexpired sentence. This supervision is governed by specific conditions of release, and the parolee may be returned to prison (“parole revocation”) for violations of such conditions.

Once a person who is suspected of committing a crime is released from the jurisdiction of a criminal justice agency, they may commit a new crime (recidivate) and thus need to be processed again through the criminal justice system. Studies show that individuals with prior criminal histories are more likely to be rearrested than those without a prior history.

The Juvenile Justice System

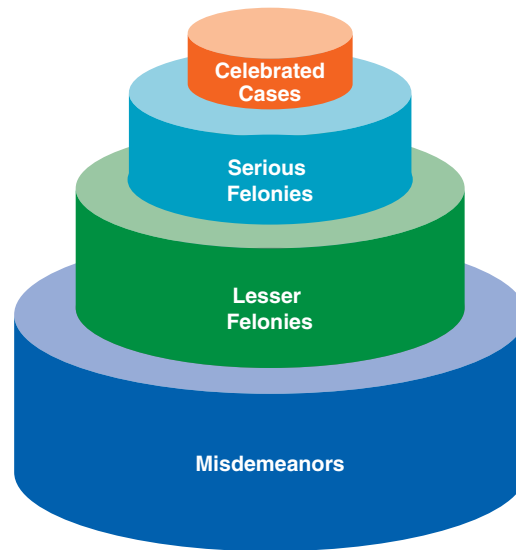
Juvenile courts usually have jurisdiction over matters concerning children, including delinquency, neglect, and adoption. They also handle “status offenses” such as truancy and running away, which are not applicable to adults. State statutes define which persons are under the original jurisdiction of the juvenile court. The maximum age of original juvenile court jurisdiction in delinquency matters is 17 in most states.³⁹

THE WEDDING CAKE MODEL OF CRIMINAL JUSTICE

The criminal justice system flowchart shown in Figure 1.2 makes it easy to see the steps through which the person experiencing the criminal justice system moves through the process horizontally. It is also helpful to see how the system treats cases differently by viewing it vertically, as shown in the **wedding cake model of criminal justice**, developed by Samuel Walker (see Figure 1.3).⁴⁰

This approach begins with the premise that not all criminal cases are viewed or handled in the same manner—by either the police or the judiciary. The type of treatment given to a particular case, including its outcome, is determined mostly by factors such as the seriousness of the charge, current policies and political influences, and the defendant’s status and resources. Some cases are run-of-the-mill and are treated as such, but some involve high-profile crimes and/or criminals and command much more attention.

As shown in Figure 1.3, the wedding cake model divides criminal justice system proceedings into four different categories: celebrated cases, serious felonies, lesser felonies, and misdemeanors. This partitioning of cases allows for a closer analysis of how the criminal justice system deals with them.

FIGURE 1.3 ■ The Wedding Cake Model of Criminal Justice

Layer 1: Celebrated Cases

The top layer of the wedding cake model includes the “celebrated cases.” These cases command a great deal of media attention because the crimes are unusual (such as when James Holmes killed 12 people and injured 70 others in a mass shooting at a movie theater in Aurora, Colorado; or when Dzhokhar Tsarnaev, along with his brother, detonated two bombs at the Boston Marathon, killed a police officer, kidnapped a man, and engaged in a shoot-out with police) or because the defendants are celebrities or high-ranking officials (consider actor Jussie Smollett’s hate crime hoax trial; O. J. Simpson, the celebrated athlete and actor whose “trial of the century” has been the topic of numerous books and documentaries; and Derek Chauvin, the former police officer convicted of George Floyd’s murder). The legal process for these types of cases is not different from that of the “usual” case, but because of their complexity or high-profile nature, many more resources are devoted in the form of forensic tests, use of expert witnesses, jury sequestering (seclusion), cameras in the courtroom, and crowd control. At the same time, due to the widespread media and public attention given to the cases, extra care is taken to ensure that defendants’ rights are protected and the accused are not given preferential treatment based on their status.

Layer 2: Serious Felonies

The second layer of the wedding cake includes serious felonies, which are violent crimes committed by people with lengthy criminal records and who often prey on people they do not know. These are viewed by the police and prosecutors as the cases that are most deserving of “heavy” treatment and punishment, and there is not as great a chance that the defendant will be allowed to enter into a plea agreement before trial.

Layer 3: Lesser Felonies

On the third layer of the wedding cake are the lesser felonies, which tend to be nonviolent and typically viewed as less important than the felonies in Layer 2. These persons who have committed a crime might have no criminal record; might have had a prior relationship with the victim; and might be charged with drug-related, financial, or other such crimes. A good portion of these cases will be filtered out of the system prior to trial and end in plea agreements.

Layer 4: Misdemeanors

Layer 4 consists of misdemeanor cases, which make up about 90% of all criminal matters. They include less serious and public-order crimes: public drunkenness, minor theft, disturbing the peace, and so on. Police are more likely to deal with these cases informally and use their discretion to determine whether an arrest is necessary. When arrests are made, they will be handled by the lower courts—where the large number of cases handled by these courts require quick case processing, making trials rare. Many misdemeanor cases are resolved with plea agreements and penalties that involve fines, probation, or short-term jail sentences.⁴¹

ETHICS THROUGHOUT THE CRIMINAL JUSTICE SYSTEM

Robert F. Kennedy, in his 1960 book *The Enemy Within: The McClellan Committee's Crusade Against Jimmy Hoffa and Corrupt Labor Unions*, stated that

in the fall of 1959 I spoke at one of the country's most respected law schools. The professor in charge of teaching ethics told me the big question up for discussion among his students was whether, as a lawyer, you could lie to a judge. I told the professor . . . that I thought we had all been taught the answer to that question when we were six years old.⁴²

As Kennedy, the late U.S. attorney general and U.S. senator, implied, by the time people reach the point of being college or university students, it is hoped that everyone—in particular, those studying the field of criminal justice—will have had deeply ingrained in them the need to practice exemplary and ethical behavior. Ethical behavior is often reemphasized in postsecondary education when instructors explain the need for academic honesty. The importance of ethics is often reinforced in other social settings—for example, in work environments (employees are entrusted with property and other responsibilities), at home (parents and other caregivers explain the importance of treating others with respect), in sports (coaches emphasize the importance of fair play), and at church (treating others as you want to be treated is often taught as a guiding principle).

Character in the criminal justice arena is of utmost importance. Without it, nothing else matters. Character, it might be said, is who we are when no one is watching. Having character means that people do not betray their fellow human beings or violate oaths of office or public trust. Unfortunately, character of mind and actions cannot be taught solely in a college or university classroom, nor can it be implanted in a doctor's office, administered intravenously, or ingested as a pill.

Prior to commencing your journey into the field of criminal justice, you might do well to first ask yourself these questions: Should police officers receive free coffee from restaurants and quick-stop establishments? What about free or half-priced meals? What about judges or prison wardens? If judges, wardens, or other criminal justice professionals are not “rewarded” with such “freebies,” then should police officers be able to accept such “gifts” while on or off duty? On what grounds do many police officers expect such favored treatment? And can this lead to ethical problems with respect to their work?

At its root, the field of criminal justice is about people and their activities; and in the end, the primary responsibilities of people engaged in this field is to ensure they be of the highest ethical character and treat everyone with dignity and respect. Therefore, this book, unlike most or all others of its kind, focuses heavily on the subject of **ethics**—or what essentially constitutes “correct” or “moral” behavior in criminal justice.

YOU BE THE . . . JUDGE

Four male juveniles were burglarizing a home when Baltimore County Police Officer Amy Caprio was called to the scene. Officer Caprio approached a stolen vehicle the teens drove to the neighborhood. When she reached the vehicle, she encountered one of the juveniles behind the wheel. She drew her weapon and fired once after the vehicle accelerated toward her. The juvenile struck her with

the vehicle and fled the scene. Officer Caprio, who had served on the department for 3 years and 10 months, was rushed to the hospital, where she was pronounced dead. Further investigation revealed the juvenile who killed the officer was waiting in the driver's seat of the stolen vehicle while his three associates carried out the burglary. All four teens were eventually charged with felony murder.

1. The juveniles were tried as adults for this crime. Does this decision by the prosecutor most closely align with the crime control or due process model of justice?
2. Should the prosecutor have had the discretion to try these juveniles as adults? Would it change your mind if they had been 12-year-olds rather than 17-year-olds?
3. Do you believe politics played a part in the decision to charge all four with murder?
4. What aggravating or mitigating circumstances of this case might be discussed at trial?
5. Where would this type of case fit on the wedding cake model of criminal justice?

Source: For more information, see Jessica Anderson, "Jury Sees Video Showing Moments Before Baltimore County Officer Amy Caprio's Death," *Baltimore Sun*, April 23, 2019, <https://www.baltimoresun.com/news/crime/bs-md-co-caprio-trial-openings-20190422-story.html>.

IN A NUTSHELL

- It is important to study the criminal justice system not only because it serves to shape our government and culture, but because all of us are potential victims, witnesses, and taxpaying supporters of our justice system. Furthermore, we need to understand the rights afforded to us by our Constitution.
- The consensus theory of justice argues that laws reflect the values and beliefs shared by most people in society, whereas the conflict theory of justice maintains that laws are created to protect the interests of the most powerful people in society.
- The crime control model, likened to an assembly line, emphasizes deterring criminal conduct and protecting society, eliminating legal loopholes, swiftly punishing persons committing crimes, and granting a high degree of discretion to police and prosecutors. Conversely, the due process model, likened to an obstacle course, holds that criminal defendants should be presumed innocent and constitutional rights of the accused should be emphasized over conviction of the guilty. Neither of these models, however, completely dominates national or local crime policy.
- Discretion is exercised throughout the criminal justice system because violations of laws vary in their seriousness, and there are not enough human and financial resources to enforce all laws equally. Therefore, persons charged with enforcing laws, adjudicating cases, and punishing persons who have committed crimes exercise considerable judgment in terms of deciding whether to act, which official response is appropriate, and to what extent the community's attitude toward specific types of criminal acts should affect such decisions.
- Although the person experiencing the criminal justice system's path through the criminal justice process may be viewed as horizontal in nature with various stages occurring in a specific sequence, there are many points through which an offender can take a vertical pathway out of the system.
- The wedding cake model of criminal justice argues that not all criminal cases are viewed or handled in the same manner by either the police or the courts—some are treated with more discretion, while others are subjected to more formal processes. The processing of cases by the criminal justice system is divided into four categories: celebrated cases, serious felonies, lesser felonies, and misdemeanors. The type of treatment given to a particular case is determined by factors such as the seriousness of the charge, current policies and political influences, and the defendant's status and resources.
- Criminal justice officials must behave ethically. People engaged in this field must be of the highest ethical character and treat everyone with dignity and respect.

KEY TERMS

Acquittal (p. 16)	Discretion (p. 12)
Adjudication (p. 16)	Due process model (p. 11)
Aggravating circumstances (p. 17)	Ethics (p. 20)
Arrest (p. 14)	Indeterminate sentence (p. 18)
Conflict theory of justice (p. 10)	Mitigating circumstances (p. 17)
Consensus theory of justice (p. 8)	Parole (p. 18)
Conviction (p. 16)	Prosecution (p. 15)
Crime control model (p. 11)	Sanction (p. 17)
Criminal justice flow and process (p. 12)	Three-strikes law (p. 6)
Determinate sentence (p. 18)	Wedding cake model of criminal justice (p. 18)

REVIEW QUESTIONS

1. Having read the chapter, do you believe it is important for you to study the structure and function of our criminal justice system? Why or why not?
2. How and why are laws created according to the consensus model of criminal justice? According to the conflict model of criminal justice?
3. How would you describe the crime control and due process models of criminal justice? What indicators might be present in your local community that would help you determine the most dominant model?
4. What are the major points at which someone accused or convicted of a crime is dealt with in the criminal justice process as they move through the police, courts, and corrections components?
5. What are the four tiers of the wedding cake model of criminal justice, and how is discretion by criminal justice officials used differently at each stage?
6. How would you characterize the importance of discretion and ethics throughout the justice system?

LEARN BY DOING

This Learn by Doing section, as well as those at the end of subsequent chapters, is an outgrowth of teachings by famed educator John Dewey, who advocated the “learning by doing” or problem-based approach to education. It also follows the popular learning method espoused by Benjamin Bloom, known as Bloom’s taxonomy, in which he called for “higher-order thinking skills”—critical and creative thinking that involves analysis, synthesis, and evaluation.⁴³

The following scenarios and activities will shift your attention from textbook-centered instruction and move the emphasis to student-centered projects. By being placed in these hypothetical situations, you can thus learn—and apply—some of the concepts covered in this chapter, develop skills in communication and self-management, at times become a problem solver, and learn about and address current community issues.

1. Assume you are an officer in your campus criminal justice honor society and are invited to speak at the society’s monthly meeting concerning your view of how crime is perceived and dealt with in your community. You opt to approach the question from Packer’s crime control and due process perspectives. Given what you know about crime and criminal justice in your community, what will you say in your presentation?

2. Your criminal justice professor asks you to prepare your own succinct diagram of the criminal justice process, including brief descriptions of each of the major stages (arrest, initial appearance, etc.) to illustrate how cases flow through the system. What will your final product look like?
3. As part of a class group project concerning the nature of crime and punishment, you are asked by your fellow group members to develop a 10-minute presentation on the wedding cake model of criminal justice. How will you describe it?
4. You have been asked to serve as a community representative on a task force aimed at proposing new criminal justice reforms. The other task force members nominate you to serve as the ethics chair. They ask you to identify the three most pressing ethical issues faced by criminal justice professionals today. How would you go about learning more about this topic before reporting back to the task force?



©iStockphoto.com/Zolnierrek

2

FOUNDATIONS OF LAW AND CRIME

Nature, Elements, and Measurement

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 2.1 Explain how modern-day law evolved from English common law.
- 2.2 Describe the three sources of law in the U.S. legal system.
- 2.3 Identify the differences between criminal and civil law.
- 2.4 Explain the difference between substantive and procedural law.
- 2.5 Review two critical elements of the criminal law—criminal intent (*mens rea*) and the physical commission of the criminal act (*actus reus*).
- 2.6 Describe how felonies and misdemeanors are placed into two separate broad categories.
- 2.7 Delineate the definitions of, and distinctions between, crimes against persons and property; the different degrees of homicide; and offenses classified as public order, white-collar, and organized crime.
- 2.8 Explain the three primary methods for measuring crime and advantages and disadvantages of each.

ASSESS YOUR AWARENESS

Test your knowledge of the foundations of law and crime by responding to the following nine true-false items; check your answers after reading this chapter.

1. The U.S. legal system is based on English common law.
2. A person who, upon returning home, discovers their premises have been illegally entered and valuables removed, will correctly tell police, "I've been robbed."
3. Under current U.S. law, one can be charged only for those criminal acts they actually perform and not for failure to act or perform in some manner.
4. As opposed to the situation under English common law, today one may use force, even deadly force, if they reasonably believe that an attack against them is imminent.
5. No particular amount of time is necessary for one to legally premeditate a murder.
6. Rape and theft are often referred to as public order or victimless crimes.
7. The term "white-collar crime" was introduced in 1939 when a researcher discovered that many crimes were committed by persons of respectability and high social status in the course of their occupations.
8. If a burglar enters a premise and commits a rape and a murder while inside, the hierarchy rule requires police to report to the FBI only the crime of murder.
9. Carjacking is now one of the FBI's eight Part I crimes.

Answers can be found on page 401.

Fatal fentanyl overdoses have increased dramatically, rising more than 38% in the United States between 2020 and 2021 alone.¹ Overdose increases have disproportionately impacted counties like Santa Cruz County, California, which experienced an increase of more than 300% in fentanyl-related deaths between 2019 and 2020 and an even larger increase between 2020 and

2021. So when an emergency call was received to report that a young female from Santa Cruz needed assistance after ingesting fentanyl, authorities did not treat the situation, or the young woman's eventual death, as suspicious.²

The young woman was 16-year-old Lace Price. Her parents, Michael and Jill Price, have argued that their daughter's death should have been treated as something more than a tragic overdose. They believe she was murdered by 23-year-old Michael Russell—the person who gave her the drug. Santa Cruz County prosecutors have started filing murder or manslaughter charges against those who distribute drugs leading to deadly fentanyl poisonings. But as you will learn in this chapter, it can be difficult to prove one's intent. For example, when prosecuting homicides, there are a variety of possible outcomes, and the prosecutor will “look behind the act” to determine the killer's state of mind, the elements of the crime that were present, and so on. A prosecutor who reviews this case must ask and attempt to answer several questions:

- Was this a crime or an unfortunate accident?
- Did someone purposefully expose this victim to a lethal dose of fentanyl?
- If not purposeful, did someone recklessly expose the victim to this substance, knowing the person consuming the drug could die from using just a small amount?

Different crimes contain different elements and correspond with various levels of punishment. Think about why different facts should lead to a different criminal charge and punishment. What facts are important in defining crimes and why? Why should these facts matter? What other facts might help you to decide more easily what happened, and what type of crime might have been committed against Lace Price?

The answers to these questions are at the very heart of the criminal law and of our system of justice, which holds people criminally responsible only when the state can prove beyond a reasonable doubt that the accused committed every element of a crime without a valid defense.

INTRODUCTION

John Adams famously said we have a “government of laws and not of men,” meaning that our democracy is not ruled at the whim of kings or rulers or demagogues. Americans willingly give up some of their rights to their elected governments to create laws and to receive protection for their persons and property. It thus becomes important that Americans possess fundamental knowledge of our laws: how they are created and to what types of behaviors they apply.

Confusion sometimes surrounds the definition of specific crimes and criminal justice system responses. We might hear someone screaming, “I’ve been robbed!” on television or in the movies after returning home and discovering their house has been entered and ransacked (they were not robbed; they were burglarized). Or someone discovers a dead body and exclaims, “He’s been murdered!” A person may have indeed been killed, but many killings are not criminal in nature; only a judge or jury can decide if a murder has taken place. News reporters commonly mistake jail for prison and might erroneously state, “John Jones, a convicted murderer, was sentenced to 10 years in jail today” (if sentenced to 10 years, Jones will serve his time in a prison, not a jail). As French philosopher Voltaire wrote, “If you wish to converse with me, define your terms.” That statement represents the major purpose of this chapter.

The reader should bear in mind, however, that several important components of the rule of law are not discussed here, primarily because they go beyond the reach of an introductory textbook. Persons wishing to inquire more deeply into the law—for example, in such areas as conspiracies, attempted crimes, omissions, and causation—would be wise to enroll in criminal law and procedure courses.



The Code of Hammurabi, written in about 1780 B.C.E., set out crimes and punishments based on *lex talionis*—“an eye for an eye, a tooth for a tooth.” It is the earliest-known example of a ruler’s setting forth a body of laws arranged in orderly groupings.

©iStockphoto.com/jjsp

COMMON LAW AND ITS PROGENY

Rules were laid out in ancient societies. The use of societal laws can be traced back to the reign of Hammurabi (1792–1750 B.C.E.), the sixth king of the ancient empire of Babylon. The Code of Hammurabi set out crimes and punishments based on *lex talionis*—“an eye for an eye, a tooth for a tooth.” A more recent source of law is found in the Mosaic Code of the Israelites (1200 B.C.E.), in which, according to tradition, Moses—acting as an intermediary for God—passed on the law to the tribes of Israel. The Mosaic Code includes the Bible’s Ten Commandments and contains descriptions of forbidden behaviors that are still defined as criminal acts in modern society (e.g., thou shall not kill nor steal).

But the system of law as we know it today (except for Louisiana’s, which is based on the French civil code) is based on common law: collections of rules, customs, and traditions of medieval England, created during the reign of Henry II (1154–1189 C.E.), who began the process of unifying the law. Henry established a permanent body of professional judges who traveled a “circuit” and sat on tribunals in shires throughout the Crown’s realm. These judges eventually gave the Crown jurisdiction over all major crimes and sowed the seeds of the trial by jury and the doctrine of *stare decisis*.³

The *stare decisis* (Latin for “to stand by things settled”) doctrine is perhaps the most distinctive aspect of Anglo-American common law. According to *Black’s Law Dictionary*, *stare decisis* is the doctrine stating that, when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle—and apply it in the same manner to all future cases where the facts are substantially the same.⁴ This doctrine binds courts of equal or lower status or levels in a given jurisdiction to the principles established by the higher appellate courts within the same jurisdiction.

For example, the federal courts have a three-tier structure (see Figure 2.1). According to the *stare decisis* doctrine, a federal district court in Maryland is required to follow the decisions of the Fourth Circuit Court of Appeals, of which it is a part, as well as those of the U.S. Supreme Court. However, it is not bound by the decisions of other district courts.⁵ Note, however, that our system of law still must remain flexible and capable of change, and thus courts can also revisit earlier decisions and set new precedents.

FIGURE 2.1 ■ Three-Tier Structure of the U.S. Federal Court System

	<p>Supreme Court</p> <ul style="list-style-type: none"> - Highest court in the federal system - 9 justices, meeting in Washington, D.C. - Appeals jurisdiction through <i>certiorari</i> process - Limited original jurisdiction over some cases
	<p>Courts of Appeal</p> <ul style="list-style-type: none"> - Intermediate level in the federal system - 12 regional “circuit” courts, including D.C. Circuit - No original jurisdiction; strictly appellate
	<p>District Courts</p> <ul style="list-style-type: none"> - Lowest level in the federal system - 94 judicial districts in 50 states and territories - Limited appellate jurisdiction - Original jurisdiction over most cases

MODERN-DAY SOURCES AND HIERARCHY OF LAW

In addition to the two primary types of law—criminal and civil (discussed in the next section)—the U.S. legal system features different sources of law and jurisdictions where those laws are enforced and administered. Our system of government is based on the concept of **federalism**. We have federal and state laws with corresponding federal and state courts to preside over such cases. Within those two legal arenas, laws—criminal and civil—are organized hierarchically, with different priorities and legal effects depending on their source and application.

Again, terminology is critical to understanding law. Generally speaking, a *statute* is a law enacted by Congress (a federal law) or by a state legislature (a state law). Statutes are also known as *statutory law*. A *code* or *ordinance* typically refers to a law enacted by a local lawmaking body—a county board or a city council, for example (municipal laws). These and other types of laws are prioritized as follows:

Federal Law

1. The U.S. Constitution—“the supreme law of the land,” which takes precedence over state constitutions and law even if they conflict
2. Federal statutes—civil and criminal laws enacted by Congress
3. Administrative laws—orders, directives, and regulations for federal agencies, such as workplace laws promulgated by the Occupational Safety and Health Administration (OSHA)
4. Federal common law—published decisions from the U.S. Supreme Court and the U.S. Circuit Courts of Appeal, which, like the common law from England (discussed earlier), establish legal “precedence” and must be followed by lower courts in the federal and state systems

State Law

1. State constitutional law—state constitutional rulings (from a state’s highest court) that may give greater protection or rights than the federal constitution but may not give less, and that

- contain protections similar to the U.S. Constitution—civil rights and liberties, separation of powers, and checks and balances
- 2. State statutes—laws enacted by state legislatures, including criminal laws like statutes prohibiting murder or robbery
- 3. State common law—precedent established in published opinions by state appellate judges when deciding civil or criminal cases

City/County Law

Municipal ordinances or codes govern many aspects of our daily lives, including the following:

- Building and construction standards
- Rent control
- Noise and nuisance regulations
- Public health and safety
- Business licenses
- Civil rights and antidiscrimination

CRIMINAL AND CIVIL LAW

Simply put, **criminal law** applies to criminal matters—for example, when someone breaks a law prohibiting the commission of a robbery. **Civil law** applies to civil matters—for example, when two parties have a property dispute or want to get divorced. These two distinct types of law differ in several critical ways.

First, each type involves different parties. Criminal law represents what we as a people have decided is criminal behavior, and crimes are considered harmful to all of us in society. As such, when someone commits a crime, the state or government—through the prosecutor or district attorney—prosecutes the person on behalf of the people. Since the title of a case always first references the party that brought suit against the other (i.e., the government entity responsible for prosecution in a criminal case), a typical criminal case name is something like *U.S. v. Jones* or *State of Maine v. Smith*. In a civil matter, two individuals (or business entities like a corporation) are on either side. In a property dispute, such as when A erects a fence over the property line of B, one neighbor brings a lawsuit against the other so the court can referee their dispute. Or if a person is injured using a product like a hairdryer, that person can bring a civil case against the manufacturer, probably a corporation. A typical civil law case name is something like *Jones v. Smith* or *Jones v. ABC Corporation*. In the former example, Jones is the party bringing the suit—the **plaintiff**—and Smith is the party defending against the suit—the **defendant**. Not surprisingly, these two types of cases are heard in different courts, and most courthouses have separate criminal and civil “divisions,” where judges are more experienced in either of these types of cases.

Another important difference involves how these cases are decided. In a criminal case, the prosecutor or the state has the burden of proving—the **burden of proof**—the defendant’s guilt “beyond a reasonable doubt.” This sometimes-heavy burden is designed to force the government—the prosecutor—to prove its case with the strongest possible evidence to avoid wrongful convictions of innocent persons. Underlying our rule of law in the United States is the all-important concept that one is innocent until proven guilty. Sometimes the burden shifts to the defense to prove something, as with self-defense claims. In a civil case, the burden on the party seeking damages or a remedy is less than in a criminal matter—those representing this party must prove their case by a “preponderance of the evidence.” The precise difference between the legal standards of “beyond a reasonable doubt” and “preponderance of the evidence” can be hard to distinguish, even for experienced lawyers.

Reasonable doubt can be difficult to explain; in fact, several courts prefer not to attempt to give the jury any explanation at all. However, in most cases reasonable doubt means that, after hearing all the evidence,

jurors do not possess an abiding conviction—to a moral certainty—that the charges brought against the defendant are true. This does not necessarily mean absolute certainty—there can still be some doubt, but only to the extent that it would *not* affect a “reasonable person’s” belief that the defendant is guilty. By contrast, if such doubt *does* affect a reasonable person’s belief that the defendant is guilty, then the prosecution has not met its burden of proof, and the judge or jury must acquit—find the defendant not guilty.

The civil standard of a preponderance of the evidence is a much less difficult burden to meet and is often referred to as the “50 percent plus a feather” test. It asks jurors to decide which way the evidence causes the scales of justice to tip, toward guilt or innocence, and to decide the case on that basis.

The major difference between civil and criminal matters is the penalty. In a criminal case, the state or prosecutor seeks to punish a defendant with prison or jail time, a monetary fine, or both (or perhaps a community-based punishment such as probation). In a civil matter, one party is seeking “damages” (money or some legal remedy) from the other party rather than trying to send them to jail or prison. In the property dispute example, A would be required to tear down or move the fence and perhaps pay for the legal fees B incurred in bringing the suit. And in the hairdryer example, the corporation could be ordered to pay the consumer’s medical expenses and legal fees.

Some conduct can give rise to both a criminal and a civil matter, as the case of O. J. Simpson illustrates.

Case Study 2.1

Criminal and Civil Law—The O. J. Simpson Case

O. J. Simpson was once a wealthy and admired college and professional football player as well as a movie and television personality. But in 1994, he was charged with stabbing to death his estranged wife, Nicole, and her friend, Ron Goldman. The media covered the trial live as California prosecutors presented evidence of Simpson’s history of domestic abuse and damning DNA evidence from the crime scene, while Simpson’s “Dream Team” of high-caliber defense attorneys cross-examined the state’s witnesses and dissected their evidence in hopes of creating reasonable doubt about Simpson’s guilt. After the nearly yearlong trial, the jury deliberated only 4 hours before returning not-guilty verdicts on all charges. One year later, the victims’ parents filed a civil suit against Simpson, alleging that he caused the victims’ wrongful deaths and seeking millions of dollars in damages for those deaths. Many people wondered how the families could hope to win when Simpson had been found not guilty in the criminal trial. The answer lies in the differences between the criminal and civil cases. In the civil case, the burden of proof on the families to establish guilt was less than the burden on the prosecutors in the criminal case. The families needed to show only by a preponderance of the evidence—rather than beyond a reasonable doubt—that Simpson killed the victims. The civil jurors needed to decide only which way the scales of justice tipped, toward guilt or innocence, not whether the state had proven Simpson’s guilt beyond a reasonable doubt. Indeed, the civil jury found Simpson responsible for the deaths and awarded the families \$33.5 million in damages. So although Simpson was acquitted in the criminal trial and did not serve any prison time, he was adjudged responsible in the civil trial and ordered to pay money damages for his conduct.

[Authors’ note: In an unrelated case, in October 2008 Simpson was convicted on 12 criminal charges and received a 33-year prison sentence stemming from a robbery at a Las Vegas casino hotel room in 2007 in which he and several cohorts attempted to retrieve memorabilia and personal items from two sports collectibles dealers. Becoming eligible for parole after serving 9 years of his sentence in a medium-security prison in Lovelock, Nevada, Simpson was granted parole in July 2017.]

Sources: For a complete analysis of the Simpson case, see, for example, Jeffrey Toobin, *The Run of His Life: The People v. O. J. Simpson* (Random House, 1998); Lawrence Schiller and James Willwerth, *American Tragedy: The Uncensored Story of the O. J. Simpson Defense* (Random House, 1996); Joseph Bosco, *A Problem of Evidence: How the Prosecution Freed O. J. Simpson* (William Morrow, 1996); CNN.com, *O. J. Simpson Main Page*, <http://www.cnn.com/US/OJ/>; Eric Levenson, “O. J. Simpson Granted Parole After 9 Years in Prison,” *CNN*, July 20, 2017, <http://www.cnn.com/2017/07/20/us/oj-simpson-parole-hearing/index.html>.

A few examples might explain the difference—and how the two types of cases can cause problems for the police and misunderstanding by the public. Assume that Jane calls the police to her home and tells the officer that she and her husband, Bill, recently separated and he went to their home and removed some furniture and other goods that she does not believe he should have taken. The officer must inform Jane that there is nothing he can do—at this point, this is a *civil*, not a criminal, matter. Jane may be upset with the officer, but legally the police have no jurisdiction in such disputes. Assume, however, that Bill goes to the home and makes serious threats of injury toward Jane, and she then goes to court and obtains a temporary protection order (TPO), commanding Bill to avoid any form of contact with her; Bill then disregards the TPO and stalks Jane at her place of employment. Because he violated the court’s order, this has now become a *criminal* matter, and the police may arrest Bill.

Or look again at the example of someone erecting a fence that cuts across his neighbor’s property. The neighbor refuses to move or tear down the fence, so the matter is taken to court. This is a civil cause of action. Both sides have a dispute that the courts will resolve if the parties cannot reach an agreement. Assume further that the neighbors cannot resolve the fence matter, and one day while one of them is working in his yard, the other attacks him with a club. Now the attacking neighbor could face a criminal charge from the state (assault with a deadly weapon) and a civil lawsuit by the injured neighbor (for medical expenses and emotional trauma).

Table 2.1 shows the primary differences between civil and criminal law.

TABLE 2.1 ■ Differences Between Civil and Criminal Law		
	Civil	Criminal
Burden of proof	“Preponderance of evidence”	“Beyond a reasonable doubt”
Nature of crime	A private wrong	A public wrong
Parties	Case is filed by an individual party	Some level of government files charges against the individual
Punishment	Usually in the form of monetary compensation for damages caused; no incarceration	Jail, fine, prison, probation, possibly death
Examples	Landlord/tenant dispute, divorce proceeding, child custody proceeding, property dispute, auto accident	Person accused of committing some crime (or, perhaps, neglecting a duty to act)

SUBSTANTIVE AND PROCEDURAL LAW

Substantive law is the written law that defines criminal acts—the very “substance” of the criminal law. Examples are laws that define and prohibit murder and robbery. **Procedural law** sets forth the procedures and mechanisms for processing criminal cases. The following examples of procedural law stem from constitutional amendments: Police officers are required to obtain search and arrest warrants, except in certain situations (Fourth Amendment); officers must give the *Miranda* warning before a suspect is interrogated while in custody (Fifth Amendment); and defendants have the right to an attorney at key junctures during criminal justice system processing (Sixth Amendment). Note that these laws govern how police officers, lawyers, judges, corrections officers, and a host of others do their work in the justice system. Procedural law also prescribes rules concerning **legal jurisdiction**, jury selection, appeal, evidence presented to a jury, order of conducting a trial, and representation of counsel.

ESSENTIAL ELEMENTS: MENS REA AND ACTUS REUS

The Latin term for criminal intent is *mens rea*, or “guilty mind,” and its importance cannot be overstated. Our entire legal system and criminal laws are designed to punish only those actors who *intend* to commit their acts. The Latin term for the physical action that constitutes a crime is *actus reus* or “guilty

act.” As will be seen later in the discussion of homicide, acts that are clearly intentional and premeditated (e.g., murder in the first degree) are punished most severely, while those acts that are less intentional and/or accidental are punished less harshly. For example, assume that Bill, while hunting deer, shoots another hunter while out in the woods. If the prosecutor has evidence to show the shooting was purely accidental in nature (the other hunter was out of position, or Bill’s gun malfunctioned), the prosecutor will not charge Bill with unlawful killing. If, by contrast, the evidence shows that Bill intended to shoot the other hunter (again, considering evidence of the position of the two men, the number of shots, or proof of Bill’s planning), the prosecutor will charge Bill with homicide.

Mens Rea: Intent Versus Motive to Commit Crime

There is an important distinction to be made between *intent* and *motive*. One’s **specific intent** concerns what they are seeking to do and is connected to a purpose or goal; **motive** refers to one’s reason for doing something. For example, when a poverty-stricken woman steals milk for her child, her intention is to steal, but her motive is to provide for her child. Therefore, motive (the “why” someone is stirred to perform an action) is grounded primarily in psychology; intent, conversely, is the result of one’s motive, is grounded in law, and carries a higher degree of blameworthiness because a harmful act was committed. Crime movies often focus a great deal on offenders’ possible motives for committing particular crimes. However, as one law professor put it, “As any first-year law student will tell you, motive is irrelevant in determining criminal liability. Unlike in the television show . . . in the perceived real world of criminal liability, motive is just a bit player, appearing only in limited circumstances, usually as a consideration in certain defenses. Ordinarily, the only real questions at trial are (1) did the defendant commit the illegal act and (2) did she have the necessary mental state (mens rea, or intent)?”⁶

To determine the requisite **mens rea** (meaning “guilty mind”) for a specific crime, we look to the criminal statute that defines the offense. But you will not find the term “mens rea” as part of any criminal law. Instead, this element is expressed through a variety of terms that differ from state to state. For example, an intentional crime might be defined as an act committed “intentionally,” “willfully,” or “maliciously,” while a less serious crime—an accidental crime—can be expressed as an act committed “negligently,” “recklessly,” or “without due caution.” The terms used to express mens rea are not uniform, so criminal justice professionals must learn to identify these terms and understand how they operate within a criminal statute (see the discussion of homicide and related exercises later in this chapter).

One’s intent while committing a crime is not always easy to prove. As is discussed later, regarding the crime of homicide, when A shoots B, there are a variety of possible outcomes, and the prosecutor will “look behind the act” to determine what was going on in the mind of the killer and whether to reduce what appears to be a charge of murder in the first degree (an intentional killing) to one of manslaughter (an accidental killing).



One’s criminal intent is a major consideration in our legal system; for example, one who intentionally kills someone during a robbery may well be charged with premeditated murder.

©iStockphoto.com/stevecoleimages



A hunter who accidentally (without intent) shoots and kills another typically would not be charged with premeditated murder.

©iStockphoto.com/Obradovi

Actus Reus: The Act

Another critical feature of the U.S. criminal justice system is that we do not punish people for merely thinking about committing criminal acts; rather, the law generally requires a voluntary, overt act—killing, injuring, threatening, or breaking and entering, for example. The intentional *failure* to act (an “omission”) can also be criminal but only when there is a legal duty to do something, such as when a person willfully fails to pay income tax owed, a parent fails to feed a child or give them medical attention, or a police officer fails to intervene when witnessing another officer using unlawful physical force against a person.

The rule for establishing criminal liability is to prove that the defendant committed the **actus reus** element (the criminal act) with the mens rea set forth in the particular criminal law. When these two critical elements are present, it is known as “concurrency.” For example, a man in a ski mask breaking into a locked home might seem to be committing the actus reus element for burglary (see Crimes Against Property, to follow). But what if he is doing so to save himself from a terrible snowstorm after his car broke down? The all-important mens rea element is missing, and there is no concurrency. Accordingly, the prosecutor must prove both elements beyond a reasonable doubt—a question of fact for the jury to decide.

YOU BE THE . . . POLICE OFFICER

The Nevada Revised Statutes⁷ set forth the following statutory provisions related to driving. Read them carefully and then respond to the questions posed.

NRS 484B.657. Vehicular manslaughter.

A person who, while driving or in actual physical control of any vehicle, proximately causes the death of another person through an act or omission that constitutes simple negligence is guilty of vehicular manslaughter.

NRS 484B.653. Reckless driving.

It is unlawful for a person to: (a) Drive a vehicle in willful or wanton disregard of the safety of persons or property, (b) Drive a vehicle in an unauthorized speed contest on a public highway, or (c) Organize an unauthorized speed contest on a public highway.

NRS 484B.165. Using handheld wireless communications device.

Except as otherwise provided in this section, a person shall not, while operating a motor vehicle on a highway in this State: (a) Manually type or enter text into a cellular telephone or other handheld wireless communications device, or send or read data using any such device to access or search the Internet or to engage in nonvoice communications with another

person, including, without limitation, texting, electronic messaging and instant messaging, or (b) Use a cellular telephone or other handheld wireless communications device to engage in voice communications with another person, unless the device is used with an accessory which allows the person to communicate without using his or her hands, other than to activate, deactivate or initiate a feature or function on the device.

1. What is the mens rea element under the vehicular manslaughter statute? What is the actus reus element?
2. Provide an example of what would qualify as reckless driving under section (a).
3. A woman who is texting while driving strikes and kills a pedestrian who is crossing the street. The woman was not speeding. Can she be charged for a violation of “NRS 484B.165: Using handheld wireless communications device”? Why or why not?

FELONIES AND MISDEMEANORS

Crimes are also classified into two broad categories based on the severity of the criminal act and the corresponding punishment. **Felonies** are offenses punishable by death or that have a possible sentence of more than 1 year of incarceration in prison. Many states further divide their felonies into different classes; for example, under Arizona’s laws, first-degree murder is a Class 1 felony and is punishable by death or life imprisonment; sexual assault is a Class 2 felony (the number of years for which one may be sentenced to prison for this and other offenses will differ, depending on an offender’s prior record); aggravated robbery (the offender has an accomplice) is a Class 3 felony; and forgery is generally a Class 4 felony.⁸

A **misdemeanor** is a less serious offense and is typically punishable by fines or incarceration for less than 1 year in a local jail. Like felonies, misdemeanors are often classified under state laws. In Arizona, shoplifting is a Class 1 misdemeanor (if the value of items taken is less than \$1,000 and the item is not a firearm); reckless driving is a Class 2 misdemeanor; a vehicle driver who dumps trash on a highway or road is guilty of a Class 3 misdemeanor.⁹

OFFENSE DEFINITIONS AND CATEGORIES

Various criminal offenses have distinct classifications. This section defines these categories.

Crimes Against Persons

Crimes against persons are what most people consider “violent crime” or “street crime,” such as certain homicides, sexual assaults, robberies, and aggravated assaults. As you will learn later in this chapter, the Federal Bureau of Investigation (FBI) defines these crimes as offenses that involve force or threat of force.

Homicide

The taking of a human life—homicide—is obviously the most serious act one can perpetrate against another person. But not every killing is criminal in nature, as the following examples demonstrate:

- Justifiable homicide—self-defense, legal state or federal executions, acts of war, or when a police officer uses lawful lethal force
- Excusable homicide—killings that are wholly accidental, such as when a person who is driving the speed limit and paying full attention hits a small child who darts into the street from behind a large RV, where no reasonable person could have known that such a risk was possible or preventable



Excusable killings include those that are accidental in nature, such as when a driver strikes and kills a toddler who darts out into the street; in such cases, the driver will not be deemed culpable (blameworthy).

AP Photo/Joshua Polson, *The Greeley Tribune*

Criminal homicides fall into two categories: murder (intentional killings) and manslaughter (accidental killings). Within these two categories, offenses are ranked in seriousness by degrees. As mentioned earlier, under our system of justice, the premise underlying homicide is that “when A shoots B, there are a variety of possible outcomes.” The prosecutor must attempt to determine the shooter’s intent, which can result in criminal charges ranging from murder in the first degree to involuntary manslaughter. A useful way to think of the universe of possible homicide charges is as a “ladder of offenses,” going from the least serious up to the most serious (see Table 2.2).

TABLE 2.2 ■ The “Ladder” of Homicide Crimes and the Required Mens Rea		
Charge	Mens Rea	Example
Murder (Intentional Killings)		
First-degree murder	Premeditated, with malice aforethought	Planning to kill your wife’s boyfriend by waiting at his home one evening and killing him when he arrives
Second-degree murder	Intentional but not premeditated	Unexpectedly seeing your wife’s boyfriend several days after you discover their affair, then quickly grabbing a gun you keep in your car and killing him
Manslaughter (Accidental Killings)		
Voluntary manslaughter	Committed in the “heat of passion”; being adequately provoked and not having time to “cool off” before the act	Arriving home and finding your wife and her boyfriend together, immediately grabbing a nearby weapon, and killing one or both of them in a blind rage
Involuntary manslaughter	Unintentional/accidental; causing a death while breaking the law (typically a misdemeanor criminal law) or while being negligent	Texting while driving and then accidentally hitting a child who darts out into the street
Felony Murder (Strict Liability)		
Felony/First-degree murder	Unintentionally causing a death while intentionally committing a dangerous felony; no mens rea required = strict liability	While burglarizing your boss’s office to steal from the petty cash fund, she arrives unexpectedly, discovers you there, has a heart attack, and dies

Murder The term “murder” includes only intentional killings, which are categorized by degrees. *Murder in the first degree* (sometimes termed “murder one”) is the unlawful, intentional killing of a human being with *premeditation and deliberation* (often termed “P&D”) and *malice aforethought*. Federal and state statutes define murder and its elements differently, but generally they all require the elements of intent, P&D, and malice aforethought.

P&D means the defendant thought about committing the act before doing so. Courts generally look at the following factors to determine P&D: evidence of planning, the manner of killing, and the prior relationship between the defendant and the victim.¹⁰ Courts also look at the *time* the defendant may have spent contemplating or planning to determine whether premeditation existed, but courts differ on this issue. The federal courts have held that *no* minimum time engaged in premeditation is necessary, and a jury can determine from the facts whether a defendant premeditated murder.¹¹ Malice aforethought is often said to be shown when someone acts with “a depraved heart,” evidenced by one’s conscious intent to shoot another person with a gun or stab someone with a knife.

Dangerous conduct can also be prosecuted as first-degree murder under the **felony-murder rule**, which provides that if a death occurs during the commission of a felony, the defendant will be charged with murder in the first degree, regardless of their intent (a crime that does not require a mens rea element is known as a “strict liability” crime—see also the discussion of statutory rape, later). The classic example involves multiple defendants robbing a bank and during the robbery, the bank security guard dies from a heart attack. In that case, all the defendants may be charged with first-degree murder under the felony-murder rule. Likewise, if one of the bank robbers panics and shoots a security guard, all of the defendants will be charged with first-degree murder even though the robbers intended only to rob, not to kill anyone. The felony-murder rule is designed to deter those who might otherwise commit dangerous felonies. If a would-be bank robber knows the penalty for an accidental death during their crime might be a charge of first-degree murder, perhaps the robber will think twice about committing the crime.

Murder in the second degree (“murder two”) is distinguished from first-degree murder in that it is also intentional—with malice—yet *impulsive*, without P&D. An example would be when two men get into an argument at a bar, and one pulls a knife and stabs the other to death. He intended to stab the other man, but the killing did not involve premeditation. Furthermore, although the intent to kill is an essential element of both first- and second-degree murder, a defendant can also be found guilty of second-degree murder if their actions show gross recklessness and a high disregard for human life, and there is extreme risk of death. Although it will depend on the jury’s views, acts such as allowing a dangerous dog to run free and bite a child, intentionally shooting a gun into a crowd of people, throwing a heavy object off a roof onto a crowded street below, and playing Russian roulette (loading a gun and intentionally firing it at another person) have led to conviction for second-degree murder. Several states have enacted “death by distribution” laws, permitting a charge of second-degree murder against persons giving drugs (including fentanyl) to others who die from ingesting the drugs.¹² As you will see later, these actions could also qualify as involuntary manslaughter.¹³

Manslaughter The term “manslaughter” refers to accidental killings categorized as voluntary (intentional but without malice) and involuntary (unintentional).

Voluntary manslaughter is an intentional killing, but it involves (at least in the eyes of the law) no malice. Instead, there is “heat of passion” to a degree that a “reasonable person” might have been provoked into killing someone. The best example is when a person comes home early in the day and finds his or her significant other in the arms of another person, becomes enraged, grabs a gun, and kills one or both persons. The killer acted in the heat of passion rather than intentionally. A killing can be downgraded on the homicide ladder, from murder to voluntary manslaughter, only if the actor was adequately provoked (generally, words alone—as in an argument—are not enough to provoke, but seeing something like a cheating spouse is), and the actor must not have had time to “cool off.” The person discovering his cheating spouse cannot leave, go to a bar and drink a few beers, and then return to the scene and kill the offending couple (this would be first-degree murder, as explained earlier). The “passion” that aroused the person to kill must have arisen contemporaneously—at the time of the provocation—and continued until the time of the criminal act.

The circumstances of a killing might cause a prosecutor to look at both second-degree murder and voluntary manslaughter as possible charges. When a perpetrator clearly killed with intent but without

P&D (e.g., two people fighting with weapons), a second-degree murder charge is appropriate. But when that same actor is fighting with weapons because the victim provoked her and she did not have time to “cool off” after that provocation, the charge could be downgraded to voluntary manslaughter. A prosecutor will consider all the evidence to determine the right homicide charge, up or down the “ladder.”

Involuntary manslaughter is typically established in one of two ways: (1) through acts of negligence, such as when one is driving too fast on a slick road and kills a pedestrian, or (2) via the misdemeanor-manslaughter rule—like the felony-murder rule, but the crime involved is a misdemeanor. For example, a man enters a convenience store and shoplifts a six-pack of beer; the clerk chases him out the door but slips and falls, striking his head on the sidewalk and dying from the force of the impact. The shoplifter may be charged with involuntary manslaughter, as his actions caused the clerk’s death.

YOU BE THE . . . PROSECUTOR

Now that you have learned the different types of homicide and how the critical element of mens rea determines the degree and punishment, consider the scenario (from the beginning of the chapter) under which the jury could have convicted Michael Russell of homicide and how mens rea plays a part in each of the following:

- *First-degree murder*: Russell intentionally gave fentanyl to Price, and he planned Price’s death.
- *Second-degree murder*: Russell gave fentanyl to Price intentionally but did not plan for Price to die.
- *Voluntary manslaughter*: Russell was near Price while consuming fentanyl, knowing that Price would likely be exposed and could be harmed by proximity to the drug.
- *Involuntary manslaughter*: Russell used fentanyl but never anticipated that Price would accidentally and unintentionally be exposed to the drug.

As the prosecutor reviewing this case, you must ask and attempt to answer several questions:

1. Should Price’s death be considered a homicide?
2. If this was a homicide, what information would you seek before charging Russell with one of the crimes listed above?
3. Further, consider additional facts in this case: Price was 16 years old, Russell was charged with sexually assaulting Price and another minor at his home where she died, and Russell was charged with concealing or destroying Price’s phone. How might those facts affect a case for homicide?

Now let’s take a look at another example.

A mother in New York asks her sister to babysit her infant son for 2 days while she goes to a job interview. The mother asks that either her sister or her sister’s 17-year-old daughter give the boy a teaspoonful of medicine two times per day, but she fails to inform them of the proper dosages. The sister becomes distracted and forgets to medicate the infant. Later, realizing the medicine has not yet been administered, the 17-year-old daughter gives the infant what turns out to be an overdose of the medicine, and the infant dies. A potentially relevant law in New York is as follows:

New York Penal Law § 125.25: A person is guilty of *murder in the second degree* when . . . under circumstances evincing a depraved indifference to human life, and being eighteen years old or more, the defendant recklessly engages in conduct which creates a grave risk of serious physical injury or death to another person less than eleven years old and thereby causes the death of such person (penalty: 15- to 25-year prison term).

As the prosecutor reviewing this case, you must ask and attempt to answer several questions:

1. What crime, if any, was committed here?
2. If there was a crime committed, who bears responsibility (culpability) for it?
3. If any of the involved parties is charged, would you have enough evidence to prove the actus reus and mens rea elements for second-degree murder?

Note: See The New York State Senate, The Laws of New York, Section 125.25, Murder in the Second Degree, <https://www.nysenate.gov/legislation/laws/PEN/125.25>.

Sexual Assault

Sexual assault, referred to as “rape” or “forcible rape” under some older state laws, was historically defined as the carnal knowledge of a female forcibly and against her will, and most criminal laws did not recognize rape of men, same-sex rape, or rape between spouses. Today, most states have adopted the modern definition of sexual assault—sexual contact without the victim’s consent, but with no limitations on gender or relationship of perpetrator and victim. Most states have also recognized that sexual assault occurs when someone has sexual contact with a person who is incapable of consenting (someone who is intoxicated, under anesthesia, or mentally challenged). In such cases, the perpetrator knows or should know that the victim cannot consent to the act. Beginning in 2013, the FBI removed the term “forcible” from the agency’s definition of rape, and it is now defined as “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” About 134,000 rapes are reported to the police annually in the United States.¹⁴

Like other crimes, sexual assault is categorized by degrees depending on the type of contact, from sexual penetration without the consent of the victim (first degree, the most serious) to unwanted sexual contact that does not result in physical injury (often third degree). Like homicide, sexual assault includes a “strict liability” crime with no mens rea element, also known as “statutory rape.” This crime is defined as sexual contact between a victim of a certain age, typically between ages 12 and 16, and a perpetrator who is older, typically 19 and above.

Robbery

Robbery is the taking of or attempt to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear. About 267,000 robberies are reported to the police annually in the United States.¹⁵ As stated earlier in this chapter, many times people who come home to find their houses have been broken into claim they have been “robbed” when they obviously have not been (they have been burglarized), given that robbery requires a face-to-face taking—a combination of theft and assault.



Robbery involves taking, or attempting to take, anything of value from another person by force or threat of force or violence, where the victim is in fear of injury or death.

iStockphoto.com/GregorBister

Aggravated Assault

Aggravated assault is an unlawful attack upon another for the purpose of inflicting severe or aggravated bodily injury. This offense is usually accompanied by the use of a weapon or by other means likely to produce death or great bodily harm. When aggravated assault (or even regular assault, as long as there

is a threat) and larceny-theft (described in the next section) occur together, the offense falls under the category of robbery. Each year about 821,000 aggravated assaults are reported in the United States.¹⁶

As is the case with homicide crimes, criminal justice students often have difficulty understanding the “ladder” of assault crimes. A few examples will help to clarify the differences:

- First, the mere placing of someone in fear for their safety is an assault. If Joe yells at Jack threateningly, “I’m going to beat your brains out,” this is an assault. An *assault*, then, occurs when one person makes threatening gestures that alarm someone and makes that person feel under attack; actual physical contact is not necessary.
- But if Joe intentionally strikes Jack on his cheek, the intentional physical contact intended to harm raises this conduct to the crime of *assault and battery*.
- Finally, if Joe gets a tire iron out of his car and strikes Jack with it several times, inflicting severe injury, Joe has now committed an *aggravated assault*.

Crimes Against Property

Crimes against property are offenses where no violence is involved—only the taking of property—crimes such as burglary, larceny-theft, motor vehicle theft, and arson.

Burglary

Burglary is the unlawful entry of a structure to commit a felony or theft. To classify an offense as a burglary, the use of force to gain entry need not have occurred, nor does anything of value have to have been stolen. The FBI, in its *Uniform Crime Reports* (detailed later in this chapter), defines “structure” as an apartment, barn, house trailer, or houseboat when used as a permanent dwelling, office, railroad car (but not an automobile), stable, or vessel (i.e., ship). About 1.1 million burglaries are reported annually in the United States.¹⁷

Larceny-Theft

Larceny-theft is the unlawful taking, carrying, leading, or riding away of property from the possession of another; it includes attempted thefts as well as thefts of bicycles, motor vehicle parts and accessories, shoplifting, pocket-picking, or the stealing of any property or article that is not taken by force and violence or by fraud. The value of the item stolen is significant, and in all states, the monetary worth will determine whether the larceny-theft is a felony or a misdemeanor; each state’s statutes will set forth its limits. For example, according to Massachusetts statutes, if the item is worth more than \$250, it is a felony; Iowa, however, has several classifications: It is a “serious misdemeanor” if the item stolen is valued between \$200 and \$500, an “aggravated misdemeanor” if worth between \$500 and \$1,000, and a felony if worth more than \$1,000.¹⁸ Each year, about 5 million larceny-thefts are reported to the police in the United States.¹⁹

Motor Vehicle Theft

Motor vehicle theft involves the theft or attempted theft of a land-based, self-propelled vehicle that does not run on rails and is not classified as farm equipment. Examples of motor vehicles include cars, buses, motorcycles, trucks, snowmobiles, and scooters. Approximately 722,000 motor vehicle thefts are reported annually in the United States. The estimated loss associated with these events is approximately \$6 billion.²⁰

Arson

Arson is any willful or malicious burning of or attempting to burn, with or without intent to defraud, a dwelling house, a public building, a motor vehicle or aircraft, personal property of another, and so forth. There are different types of arsonists, with very different motives for setting fires. Each year about 33,000 arsons are reported to police, with an average loss per event of about \$16,400. Just under half (42%) of all arsons involve structures (residential, storage, public, etc.).²¹

Public Order Crimes

Public order crimes are offenses that violate general public values, or the norms shared among most members of society. They are sometimes called “victimless” crimes since many people argue that these crimes harm only the offenders. Public order crimes are also sometimes called “complaintless” crimes since many involve consensual activities or do not involve clearly identifiable victims. Offenses classified as public order crimes include drug-related crimes, prostitution, public drunkenness, gambling, and various forms of disorderly conduct. Although public order crimes often involve consensual activities between offenders (e.g., a drug dealer and a drug user, a prostitute and a “John” who pays for sex), violence and other serious criminal offenses often accompany these activities. For example, shootings and homicides are commonplace in open-air drug markets when dealers fight over market territory. Further, human trafficking is closely tied to prostitution. The United Nations Office on Drugs and Crime reports that sexual exploitation accounts for up to half of all human trafficking in North, Central, and South America.²²

White-Collar Crime

The concept of **white-collar crime**, sometimes called occupational or corporate crime, was introduced in 1939 in an address to the American Sociological Association by Edwin Sutherland, who defined it as “a crime committed by a person of respectability and high social status in the course of his occupation.”²³ White-collar crime challenges many of the traditional assumptions concerning criminality—that it occurs in the streets and is mostly committed by criminals who are lower class and uneducated. Sutherland, after examining 40 years of records held by regulatory agencies, courts, and commissions, reported that of the 70 largest industrial and mercantile corporations, each had violated at least one law, averaged eight violations apiece, and had an adverse decision related to false advertising, patent abuse, wartime trade violations, price fixing, fraud, or intended manufacturing and sale of faulty goods.²⁴

Although we frequently hear of white-collar criminals, the extent of white-collar crime is difficult to measure for several reasons. First, collecting accurate data is difficult since official statistics and victim surveys generally do not include much information concerning this type of crime. And, for obvious reasons, corporations zealously guard their public image and thus prefer to regulate themselves and maintain a code of silence. In addition, the police, social scientists, and members of the media are often inexperienced in the ways of corporate crime, much of which involves insider corporation- and industry-specific knowledge. Furthermore, although the Sherman Antitrust Act (1890) and hundreds of laws and regulatory agencies exist to keep white-collar crime in check and to police corporations—through recalls, warnings, consent agreements, injunctions, fines, and criminal proceedings—guilty companies often maintain legions of attorneys and accountants who possess considerable expertise in seeing that their bosses are seldom if ever punished.²⁵ We do know, however, that white-collar crime is the largest and most costly type of crime in the United States. As criminologist Frank Hagan put it, “All the other forms of criminal behavior together do not equal the costs of occupational and organizational (corporate) crime.”²⁶

Several celebrity white-collar crime cases have made national news. Most people have heard of Bernie Madoff’s \$50 billion fraudulent Ponzi scheme (where one basically uses new investors’ funds to pay early investors rather than using profits earned by the individual or organization running the operation); Madoff was sentenced to 150 years in prison for his crimes.²⁷ Or they know that businesswoman/author/television personality Martha Stewart was convicted of committing and lying about insider trading, in which she sold stock that she knew was likely to plunge in price.²⁸ These celebrated cases are well known, but white-collar crime can take many more forms, including the following:

- A 2019 college admissions bribery scandal, called Operation Varsity Blues, exposed parents and university staff involved in bribery and other forms of fraud to facilitate applicant admissions to top American colleges and universities.
- A Swiss pharmaceutical company pleaded guilty and paid a record \$500 million in fines for price fixing on vitamins.

- Medical quackery and unnecessary surgical procedures victimize more than 2 million Americans, cost \$4 billion, and result in about 100,000 deaths per year.²⁹ Fee splitting and “ping-ponging” (in which doctors refer patients to other doctors in the same office) also occur.
- A major auto manufacturing company, aware that a defect (which would cost \$11 to repair) in one of its vehicles could result in a fiery explosion during a rear-end collision (even at low speeds), decided it would be cheaper not to recall the vehicles and make repairs but, instead, to pay drivers’ injury and death claims.³⁰ Lawyers engage in “ambulance-chasing,” file unnecessary lawsuits, and falsify evidence.
- Corporations dump or release toxic chemicals and hazardous materials into the environment to cut costs and avoid regulatory laws.
- Companies steal secrets and patents from one another and thus commit corporate espionage.
- Individuals steal the identities of others, with over 16 million persons in the United States being victimized by identity thieves in any given year.³¹ Offenders may target victims of natural disasters or other types of victims in phony fundraising schemes.
- Nigerian letter scams often involve emailed pleas to help transfer money from Nigeria or some other part of the world, with false promises of financial compensation if victims agree to provide their banking information.

An often-cited crime typology, developed by Herbert Edelhertz, distinguishes between two types of white-collar crime.³² The first type involves crimes committed in the course of offenders’ occupations by those operating inside business, government, or other establishments in violation of their duty of loyalty and fidelity to employer or client. These crimes could include commercial bribery and kickbacks, embezzlement, insider trading, expense account fraud, or any other offense committed by an offender in the course of carrying out their work duties. The second type of white-collar crime involves crimes incidental to and in furtherance of business operations (but not the central purpose of the business). For example, producing false company financial statements, using deceptive advertising, or committing antitrust violations can indirectly benefit the offender by benefiting their employment company.

Organized Crime

Organized crime is a term used to describe illegal acts committed by individuals involved in illegal organizations. White-collar criminals commit crimes as part of larger organizations, using their association or relationship with legitimate businesses and organizations to carry out their offenses. Organized crime offenders differ in that they use their association or relationship with illegal entities to carry out criminal activities. These illegal groups commonly engage in behaviors known as racketeering activities. The FBI defines these activities under the Racketeer Influenced and Corrupt Organizations (RICO) statute,³³ and they include the following: bribery (including sports), counterfeiting, embezzlement of union funds, mail and wire fraud, money laundering, obstruction of justice, murder for hire, drug trafficking, prostitution and sexual exploitation of children, alien smuggling, trafficking in counterfeit goods, theft from interstate shipment, and interstate transportation of stolen property. Organized crime may also include the following state crimes: murder, kidnapping, gambling, arson, robbery, bribery, extortion, and various drug offenses.

MEASURING CRIME AND VICTIMIZATION

Data about actual crime rates—incidents, offenders, location, and so on—help us more fully understand after the fact just how prevalent crime and offenders are. This information can then guide scholars and researchers to seek explanations for rates that are spiking or falling. Crime measurement attempts to answer the question of “how much” with respect to crime in the United States, arming both criminal justice professionals and policymakers with critically important information to run this complex, human system.

How Much Crime in the United States? Depends on Whom You Ask

Mark Twain once said, rather famously, that there are “lies, damn lies, and statistics.”³⁴ Unfortunately, that assessment of statistics is somewhat (if not significantly) accurate with respect to U.S.-reported crime figures. One example that will make the point is two different data sets reporting hate crimes. Specifically, in a recent year, the FBI’s *Uniform Crime Reports* (discussed in the next section) reported a total of 7,314 hate crimes (with 8,812 victims).³⁵ However, the National Crime Victimization Survey (NCVS, also discussed later in this chapter) reports an annual average of just under 250,000 violent hate-crime victimizations. This significant discrepancy is largely due to the fact that more than half (54%) of victims in the NCVS did not report their crimes to the police. Furthermore, in the NCVS, hate-related victimizations are based on victims’ *suspicion* of the offenders’ motivation rather than on the police’s suspicion.³⁶ Thus, crime figures must be viewed with caution and with an understanding of the limitations associated with each data source.

Errors and variations notwithstanding, to comprehend the impact of crime on our society, criminologists, victimologists, sociologists, psychologists, and members of other related disciplines need such information for their research and for making planning and policy recommendations. Knowing the nature and extent of crime also helps us understand the social forces that are driving those offenses and aggregated trends. Furthermore, measuring crime is one of the best ways to determine the effectiveness of our criminal justice agencies and policies. We can better examine the structure and functions of the police (by looking at reported crimes and the proportion of crimes solved by arrest or other means), the courts (to determine the types of punishment and treatment that offenders are receiving), and corrections organizations (to ascertain, among other things, whether or not people once incarcerated are being returned to prisons and jails).

Having crime data also allows for calculations of a national *crime rate* (discussed later), which in turn provides us with a “victim risk rate”—the odds that we (or others we know) will become a victim of a serious crime.

Discussed first is the FBI’s **Uniform Crime Reports**, followed by a review of a more in-depth method of capturing and analyzing reported crimes: the National Incident-Based Reporting System; finally, the National Crime Victimization Survey is examined. As you will learn, these three sources of crime information are very different in their approaches and findings.


The FBI’s Uniform Crime Reports

The Uniform Crime Reporting (UCR) Program was conceived in 1929 by the International Association of Chiefs of Police to meet a need for reliable, uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics. Today, several annual statistical publications, such as the comprehensive *Crime in the United States*, are produced from data provided by more than 18,000 law enforcement agencies across the United States.

FBI: UCR

Home

Uniform Crime Reporting



The Uniform Crime Reporting (UCR) Program has been the starting place for law enforcement executives, students of criminal justice, researchers, members of the media, and the public at large seeking information on crime in the nation. The program was conceived in 1929 by the International Association of Chiefs of Police to meet the need for reliable uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics.

Today, four annual publications, *Crime in the United States*, *National Incident-Based Reporting System*, *Law Enforcement Officers Killed and Assaulted*, and *Hate Crime Statistics* are produced from data received from over 18,000 city, university/college, county, state, tribal, and federal law enforcement agencies voluntarily participating in the program. The crime data are submitted either through a state UCR Program or directly to the FBI’s UCR Program.

In addition to these reports, information is available on the Law Enforcement Officers Killed and Assaulted (LEOKA) Program and the Hate Crime Statistics Program, as well as the traditional Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS).

The FBI is undertaking a redesign of the system that has supported the FBI’s UCR Program for more than 30 years. In support of this initiative, the FBI is currently managing the UCR Technical Refresh. [Details](#)

Explore Our Services

Publications

- Crime in the United States
- Law Enforcement Officers Killed and Assaulted (LEOKA)
- Hate Crime Statistics
- National Incident-Based Reporting System (NIBRS)
- Cargo Theft 2014 (pdf)
- Cargo Theft 2013 (pdf)
- Human Trafficking (pdf)


NIBRS Resources

- NIBRS Overview

Recent Program Updates


- National Use-of-Force Data Collection
- Historical Rape Definition Retired (pdf)
- New Rape Definition (pdf)
- New Rape Definition Frequently Asked Questions (pdf)
- New Rape Fact Sheet (pdf)

Latest Releases



Law Enforcement Officers Killed and Assaulted 2016

The latest edition of Law Enforcement Officers Killed and Assaulted provides national statistics on lives lost in 2016. [Details](#)



Crime Stats for 2016

Violent crime increased and property crimes decreased during 2016 when compared to 2015 data. [Details](#)

The Federal Bureau of Investigation’s Uniform Crime Reporting Program publishes annual crime data for selected crimes as reported to the police in the United States.

Other ancillary annual publications, such as *Hate Crime Statistics* and *Law Enforcement Officers Killed and Assaulted*, address specialized facets of crime such as hate crime or the murder and assault of law enforcement officers.³⁷ Special studies, reports, and monographs prepared using data mined from the UCR Program's large database are published each year as well. In addition to these reports, information about the National Incident-Based Reporting System (discussed later in this chapter), answers to general UCR questions, and answers to specific UCR questions are available on the program's website.

For the purposes of the *Uniform Crime Reports*, the FBI divides offenses into two groups: Part I and Part II crimes. Each month, contributing agencies voluntarily submit information to the FBI concerning the number of Part I offenses reported to them, as well as those offenses that were cleared by arrest and the age, sex, and race of persons arrested for each of the offenses.

Crime Rate

A fundamental aspect of calculating and understanding crime concerns how the FBI calculates the **crime rate**. The formula used is not complicated in nature. It is as follows: number of crimes reported, divided by the population of the jurisdiction in question, then multiplied by 100,000; this renders the number of crimes reported for each 100,000 population. It is depicted as follows:

$$\frac{\text{Number of offenses}}{\text{Population of the jurisdiction}} \times 100,000$$

As an example, in a recent year, about 1,203,808 violent crimes were reported to the police in the United States; also, for that year the nation's reported population was 328,239,523. According to this formula, the resulting crime rate for that year was 366.7 violent crimes per 100,000 population.³⁸

The crime rate formula can also be considered a "victim risk rate," or the chances of one's becoming a victim; therefore, the chances of one's being a victim of a violent Part I offense for that recent year were about 367 in 100,000.

Part I Offenses

Part I, or "index" crimes, are composed of eight serious felonies—murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. Over 8 million such crimes are reported each year (about 1.2 million being violent and 6.9 million, property).³⁹ The first four of these eight offenses are deemed crimes against *persons* and are defined in the UCR Program as offenses that involve force or threat of force.

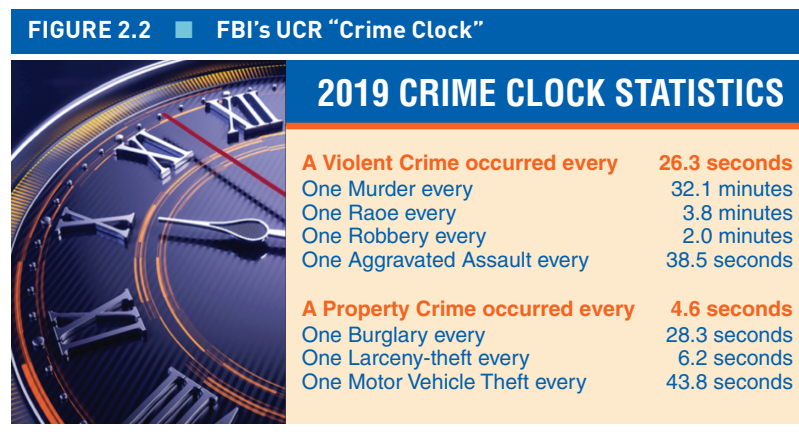
As seen in Table 2.3, crimes of murder had declined each year between 2012 and 2014. However, murders increased between 2014 and 2015 by about 12.1% and increased again by about 9.6% in 2016. Between 2016 and 2017, the number of homicides reported to the police in the United States remained relatively stable (less than a 1% decline).⁴⁰

TABLE 2.3 ■ Rates of Murder Committed in the United States

Year	Population	Murder and Nonnegligent Manslaughter	Murder and Nonnegligent Manslaughter Rate
2014	318,907,401	14,164	4.4
2015	320,896,618	15,883	4.9
2016	323,405,935	17,413	5.4
2017	325,719,178	17,284	5.3
2018	326,687,501	16,374	5.0
2019	328,239,523	16,425	5.0

Source: Adapted from Federal Bureau of Investigation, "Table 1. Volume and Rate per 100,000 Inhabitants, 1998–2017," *Crime in the United States—2017* [Uniform Crime Reporting Program].

The FBI's annual *Uniform Crime Reports* contain a “crime clock” that depicts the average time intervals between Part I crimes; a sample crime clock is shown in Figure 2.2.



Source: Federal Bureau of Investigation.

Part II Offenses

In addition to information concerning the eight Part I offenses, the FBI provides arrest-only data for about 20 Part II offenses—simple assaults, forgery, embezzlement, prostitution, vandalism, drug violations, and so forth.⁴¹

Cautions and Criticisms of UCR Data

Each year when the FBI's *Crime in the United States* is published, many people and groups with an interest in crime rush to use the crime figures in attempts to rank and compare crimes in cities and counties. The FBI is quick to point out each year in its *Uniform Crime Reports* that making such comparisons is ill advised, due to the variety of characteristics of different states, counties, and communities.

Many variables can contribute to the amount of crime occurring in a specific jurisdiction. First, it is important to understand a jurisdiction's industrial/economic base, its dependence on neighboring jurisdictions, its transportation system, its reliance on tourism and conventions, its proximity to military installations and correctional facilities, and so forth. Indeed, the strength and aggressiveness of the local police are also key factors in understanding the nature and extent of crime occurring in an area.

In addition to the crime theories discussed earlier, other factors known to affect the volume and type of crime are largely outside the control of the criminal justice system:

- Population density and degree of urbanization
- Variations in composition of the population, particularly youth concentration
- Stability of the population with respect to residents' mobility, commuting patterns, and transient factors
- Modes of transportation and highway system
- Economic conditions, including median income, poverty level, and job availability
- Cultural factors and educational, recreational, and religious characteristics⁴²

Critics of UCR data—who include any person engaged in serious research into crime, criminology, victimology, and so on—commonly note the shortcomings of these data (see Table 2.4).⁴³

TABLE 2.4 ■ Limitations of the *Uniform Crime Reports*

Although the FBI's *Uniform Crime Reports* include several unique publications, such as special reports providing statistics on hate crimes and law enforcement officers killed and assaulted, the data have some limitations.

UCR LIMITATIONS

Offense data are available only for a small number (eight) of all crimes committed in the United States.

The UCR data list only crimes reported to law enforcement agencies (not all crimes that occur are known to the police).

Reporting of citizens' reports of crime by the police is voluntary; therefore, police may choose not to report or might report inaccurately (thus UCR data may be affected by the reporting practices of local law enforcement).

The hierarchy rule (discussed in the text) is used, meaning that when a number of crimes are committed as part of a single criminal act, only the most serious offense of all of them is reported to the UCR.

Attempted crimes are combined with completed crimes.

When computing crime rates, the UCR counts incidents involving all kinds of targets (e.g., crimes of burglary are against businesses and residents, not against "populations").

The UCR includes very little information concerning crime victims.

Note: A complete UCR handbook may be viewed at https://ucr.fbi.gov/additional-ucr-publications/ucr_handbook.pdf.

Source: Federal Bureau of Investigation's *Uniform Crime Reports*.

The Hierarchy Rule: Definition and Application

In tabulating how many crimes occur each year, law enforcement agencies are instructed by the FBI to use what is known as the **hierarchy rule**, which basically says that when more than one Part I offense is committed during a criminal event, the law enforcement agency must identify and report only the offense that is highest on the hierarchy list.⁴⁴

Put another way, the hierarchy rule requires counting only the most serious offense and ignoring all others. Note, however, that this rule applies only to the crime reporting process; it does *not* affect the number of charges for which the defendant may be prosecuted in the courts.

Case Study 2.2**The Hierarchy Rule**

To better understand the hierarchy rule in these exercises, you may wish to first revisit the Part I offenses listed earlier in this chapter, ranked in terms of their severity.

1. Assume that Doe, during the daytime hours, enters Smith's home through an unlocked back door and removes furniture that is valued at about \$10,000. If Doe is apprehended, under the hierarchy rule the *only* crime the police will report to the FBI is
 - a. burglary
 - b. theft
 - c. robbery
 - d. felony-theft
2. Further assume that Smith returns home and finds Doe inside; after scuffling briefly, Doe strikes Smith sharply with a candlestick holder, rendering Smith unconscious and near death. Then Doe, fearing he will be caught and returned to prison if Smith testifies against him, picks up a nearby vase and strikes enough blows to end Smith's life. What crime(s) has Doe committed? Under the UCR Program's hierarchy rule, which crime(s) will be reported by the police to the FBI?

The National Incident-Based Reporting System

Being aware of the criticisms leveled over time against the UCR Program, the U.S. Department of Justice in 1988 launched the **National Incident-Based Reporting System** (NIBRS). Although the UCR Program collects and analyzes data for eight Part I offenses, the NIBRS furnishes crime data provided by more than 5,900 participating federal, state, and local law enforcement agencies for 49 specific crimes (called Group A offenses), grouped into 23 crime categories.⁴⁵ The FBI posts an interactive map, which depicts the locations of participating agencies and the number of offenses reported for each of the major crime categories. This map can be accessed at <https://nibrs.fbi.gov/>.

With NIBRS, legislators, municipal planners/administrators, academicians, sociologists, and the public have access to more comprehensive, detailed, accurate, and meaningful crime information than the traditional UCR system can provide. With such information, law enforcement can better make a case to acquire the resources needed to fight crime. The NIBRS also enables agencies to locate similarities in crime-fighting problems so agencies can work together to develop solutions or discover strategies for addressing the issues. Several NIBRS manuals, studies, and papers are available on the UCR Program's website at <https://www.fbi.gov/services/cjis/ucr/nibrs>.

There are important differences between the UCR and the NIBRS data sets. For example, the NIBRS does not apply the UCR's hierarchy rule. If more than one crime was committed by the same person or group of persons during the same event, then all the crimes would be reported in the NIBRS database. Further, in addition to having the UCR Program's two crime categories—crimes against persons (e.g., murder, rape, and aggravated assault) and crimes against property (e.g., robbery, burglary, and larceny-theft), the NIBRS includes a third crime category: crimes against society, which represent society's prohibitions against certain types of activities (e.g., drug or narcotic offenses). The more detailed NIBRS data became the national crime data standard on January 1, 2021.⁴⁶

The National Crime Victimization Survey

The **National Crime Victimization Survey** (NCVS), created to address some of the shortcomings of the UCR Program, has been collecting data on personal and household victimization since 1973. The NCVS claims on its website to be “the nation's primary source of information on criminal victimization.” Each year, data are obtained from a nationally representative sample of about 150,000 households comprising nearly 240,000 persons on the frequency, characteristics, and consequences of criminal victimization in the United States. Each household is interviewed twice during the year. The survey enables the Bureau of Justice Statistics to estimate the likelihood of victimization by rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft for the entire population as well as for segments of the population, such as women, older adults, members of various underrepresented groups, city dwellers, or other groups. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of persons committing violent offenses.⁴⁷

The survey—which asks respondents to report crime experiences occurring in the past 6 months—is administered by the U.S. Census Bureau (under the U.S. Department of Commerce) on behalf of the Bureau of Justice Statistics (under the U.S. Department of Justice).

There are four primary objectives of the NCVS:

- Develop detailed information about the victims and consequences of crime
- Estimate the number and types of crimes not reported to the police
- Provide uniform measures of selected types of crimes
- Permit comparisons over time and types of areas⁴⁸

The NCVS categorizes crimes as “personal” or “property.” Personal crimes cover rape and sexual attack, robbery, aggravated and simple assault, and purse-snatching/pocket-picking, whereas property crimes cover burglary, theft, motor vehicle theft, and vandalism.

A potential problem with the NCVS is that it estimates crime based on a representative sample; it would be too costly and time consuming to try to survey all U.S. residents. Also, since it relies on victim reports, there is the possibility that respondents might forget crimes, be unable to recall crime details, or provide inaccurate information to surveyors.⁴⁹

Going Global 2.1

Measuring Crime Victimization in England and Wales

The Crime Survey for England and Wales (CSEW), known as the British Crime Survey (BCS) until 2012, is a victimization survey conducted in England and Wales. The CSEW, like the National Crime Victimization Survey (NCVS) conducted in the United States, measures crime levels in England and Wales by asking residents directly whether they have experienced crime in the previous year. In addition to victimization experiences, the CSEW asks respondents in a random sample of households about their opinions regarding different crime-related issues. Respondents are asked about their perceptions of the police, the criminal justice system, and crime and antisocial behavior. Whereas the NCVS collects data on residents aged 12 and older, the CSEW collects information from residents aged 10 and older.

Like the NCVS, the CSEW provides a rich source of data about crime victimization and victim characteristics. Both surveys are used to help track crime trends and estimate the amount of crime that goes unreported to the police. Both surveys are used by crime and victimization policy makers and researchers who wish to know more about why some people are more likely to be victimized than others. The CSEW and the NCVS have been particularly useful sources of information for crime scientists (also known as environmental criminologists) who find that a large proportion of victimization is experienced by a small proportion of victims. For example, one estimate finds that 1% to 2% of potential targets account for about half of all crime. Understanding why some people are targeted more often than others has helped crime scientists to develop strategies to reduce crime by preventing repeat victimization.

Sources: U.S. Census Bureau, National Crime Victimization Survey, <https://www.census.gov/programs-surveys/ncvs.html>; Office for National Statistics, Crime Survey for England and Wales, <https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/crime-surveyforenglandandwales>; Graham Farrell and Ken Pease, "Repeat Victimization," in Gerben Bruinsma and David Weisburd (Eds.), *Encyclopedia of Criminology and Criminal Justice* (Springer, 2014), pp. 4371–4381.

PRACTITIONER'S PERSPECTIVE

CRIMINAL JUSTICE PROGRAM DIRECTOR, FORMER LAW
ENFORCEMENT OFFICER, AND DRUG INVESTIGATOR



Michael Verro
Senior Faculty Program Director
Excelsior College

Name: Michael Verro

Position: Criminal Justice Program Director; Former Law Enforcement Officer and Drug Investigator

Location: Excelsior College, Albany, New York

What is your career story? Prior to working for Excelsior College, I was in law enforcement, starting when I was 18 years old. I started doing seasonal work as a peace officer, which is like private security, but they have police authority. When I got out of college, I realized that law enforcement was an area I wanted to go into as a profession. So for the next couple of years, I started like most people do in private security. I was a private investigator, a bodyguard, and worked my way up. At about age 27, I was hired as a police officer and I did that for 25 years. For 15 of those years, I worked as both a police officer and a detective. I was subsequently recruited to the DEA drug task force, and I worked for them for about 3 years.

I eventually went back to work as a police officer and then came back to New York and worked again as a peace officer. That really led into my world of academia; and now I'm the program director for criminal justice at Excelsior.

What characteristics and skills are most helpful to succeed in this position? To me, skills are trainable. And there's a big distinction between training and education. That's one thing I think a lot of people have a misconception about. For education, you go to college. You learn theory, application, and critical thinking. Whereas training and some of the other skills are usually taught at an academy, things like driving, shooting, and defensive tactics.

But there are some psychological and mental skills people should possess for this career. And I consider those to be traits or characteristics of their broader personality. Things such as maturity, intelligence, wanting to help other people, and being level headed. Those are very important characteristics and skills, and some they should possess if they're going to go into this field.

Do you see any common trends in this position? When I went on the job almost 30 years ago, there wasn't a lot of technology. We carried a radio around on our hip that we used to call the brick because it was about the size of a red building brick. It was very heavy and unreliable. Years ago, you had to call for dispatch and then wait and hope that they could go through their information, their databases, or make phone calls as quickly as possible to obtain the information you wanted. Nowadays, every patrol car has a laptop with immediate access to information at your fingertips. Police officers wear body cameras, everything is digitally recorded, and they're using drones for surveillance and intelligence gathering. It used to be, again, when we looked to get a warrant—let's say a search warrant—it was basically searching a house. Now there are digital search warrants if you want to ascertain information off computers or servers. So technology is growing—not only from the criminal justice perspective but also from the crime perspective. Every 90 days, there's some new form of digital crime being perpetrated, and the criminal justice system has to keep up with that.

What are some challenges and misconceptions you face in this position? One of the hardest things that we have to deal with is the fact that criminal justice education is often seen as more of a trainable thing, that it's not really taken seriously in academia as an actual degree or not considered one of the real sciences. That's a misconception. It's kind of like psychology in that it wasn't really seen as a science until the late 1800s.

IN A NUTSHELL

- Our legal system is based on the English common law: collections of rules, customs, and traditions. At its core is the doctrine of stare decisis, meaning that when a court has decided a case based on a set of facts, it will adhere to that principle, and other courts will apply that decision in the same manner to all future cases where facts are substantially the same.
- There are three sources of law in the U.S. legal system: federal law, state law, and city/county law.
- There are both civil and criminal laws at the federal, state, and local levels. Many more laws are enacted each year by the U.S. Congress, state legislatures, and city councils.

- Substantive law is the written law that defines or regulates our rights and duties. Procedural law sets forth the procedures and mechanisms for processing criminal cases.
- Two essential elements that underlie our system of law are mens rea (criminal intent) and actus reus (a criminal act or a failure to act where there is a legal duty).
- Criminal laws define crimes by specifying the actus reus (such as killing for homicide and the taking of property for robbery) and the mens rea (intentionally, recklessly, by force, unintentionally, etc.). Most crimes are categorized by degrees, depending on the seriousness of the physical contact or threat (threatening versus physical contact) and the perpetrator's mens rea (intentional versus accidental), or based on the value of items stolen or damaged in crimes against property.
- Common crime categories include crimes against persons, crimes against property, public order crimes, white-collar crime, and organized crime.
- Crimes in the United States are measured and reported in three primary ways: the FBI's *Uniform Crime Reports*, the National Incident-Based Reporting System, and the National Crime Victimization Survey. Each has its unique approaches as well as advantages and disadvantages.

KEY TERMS

Actus reus (p. 34)	Mens rea (p. 33)
Burden of proof (p. 30)	Misdemeanor (p. 35)
Civil law (p. 30)	Motive (p. 33)
Crime rate (p. 44)	National Crime Victimization Survey (p. 47)
Crimes against persons (p. 35)	National Incident-Based Reporting System (p. 46)
Crimes against property (p. 40)	Organized crime (p. 42)
Criminal law (p. 30)	Plaintiff (p. 30)
Defendant (p. 30)	Procedural law (p. 32)
Federalism (p. 29)	Public order crimes (p. 41)
Felonies (p. 35)	Reasonable doubt (p. 30)
Felony-murder rule (p. 37)	Stare decisis (p. 28)
Hierarchy rule (p. 46)	Substantive law (p. 32)
Intent, specific (p. 33)	<i>Uniform Crime Reports</i> (p. 43)
Legal jurisdiction (p. 32)	White-collar crime (p. 41)
<i>Lex talionis</i> (p. 28)	

REVIEW QUESTIONS

1. What are the differences between criminal law and civil law?
2. How would you define and explain the importance and contributions of mens rea and actus rea as they operate in our legal system?
3. What is the difference between one's motive and one's intent to commit a crime, and which is the most important in our legal system?
4. A Nebraska law states the following: "Any person who knowingly or intentionally causes or permits a child or vulnerable adult to ingest methamphetamine, a chemical substance used in manufacturing methamphetamine, or paraphernalia is guilty of a Class I misdemeanor." The mens rea for this crime is _____; the actus reus element of this crime is _____.
5. What is the difference between white-collar crime and organized crime?
6. What are the three primary methods of measuring the extent of crime, and what have been offered as disadvantages for some of them?

LEARN BY DOING

The following are two additional case studies, each of which is grounded in actual case facts and chapter materials (concerning sexual assault and homicide, respectively). While studying each scenario, first assume that you are the *prosecuting* attorney and decide which charge(s), if any, should be brought against the accused based on the facts. Next, assume the role of the *defense* attorney and explain, given the facts, what defenses should legitimately be made against the crime(s) charged. Remember that the Sixth Amendment entitles every defendant to the “guiding hand” of effective counsel, whose job it is to ensure that all legal protections are afforded. Answers and/or outcomes for each case are provided in the Notes section. For purposes of discussion, however, approach all of them as if there are no absolute, totally correct answers.

A high school principal threatens a graduating senior that if she does not have sex with him, he will prevent her from graduating. She submits against her will and then reports the incident to police after she is able to graduate. The state prosecutes the man under a first-degree sexual assault statute that reads as follows:

A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent. “Without consent” shall mean the victim is compelled to submit by force or by threat of force.

1. What is the prosecution’s best argument that this is precisely the type of situation the law seeks to prevent and that the defendant is guilty of first-degree sexual assault? What facts would you want to know in your capacity as a prosecutor to bolster your case?
2. What is the defense attorney’s best argument that this statute does not apply in this case? What other facts would you want to know to strengthen your argument?
3. You are a state lawmaker—how would you revise this statute to better address this case and ones like it? Be specific and rewrite the law as necessary.⁵⁰

Peterson is relaxing at home when he hears noises in the alley behind his house; he looks in that direction and sees three men who are removing parts from his parked vehicle. Peterson approaches the men and tells them to stop what they are doing; he then runs inside his home, obtains a pistol, and returns to the alley. By now, the three men are back in their vehicle and preparing to drive away. Peterson approaches them and tells them not to move, or he will shoot. The driver exits the car and, with a wrench in his hand, begins advancing toward Peterson. Peterson then warns the driver not to come any closer. Still carrying the wrench, the man continues to move toward Peterson, who then shoots and kills him.

4. What is the *primary* legal issue here?
5. Also consider the following questions:
 - What charge should the prosecutor bring against Peterson: murder in the first degree? Murder in the second degree? Manslaughter?
 - Did Peterson act in self-defense?
 - What other options might have been available to Peterson, aside from obtaining a gun and returning to the alley? And besides shooting the driver?⁵¹

The following two activities will allow you to explore and discuss several of the crime data sources discussed in this chapter:

6. As part of a criminal justice honor society paper to be presented at a local conference, you are asked to use the internet and determine how many crimes were reported for your city, your county, your state, and the United States during the past calendar year. How will you proceed?
7. Your criminal justice professor is working on a journal article concerning the dangers of police work, and she asks you to obtain some information on police deaths and assaults. Using the FBI’s UCR website and its supplemental report, *Law Enforcement Officers Killed and Assaulted* (at <https://ucr.fbi.gov/ucr-publications>), what would you report?



©iStock.com/PPAMPicture

3

THEORIES OF CRIMINALITY AND CRIME

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 3.1** Distinguish between the classical and positivist schools of criminology and their explanations for criminality.
- 3.2** Explain how biological and physical traits have been used to explain criminality.
- 3.3** Describe how social structures in society—characteristics of urban environments and access to legitimate opportunities—create conditions conducive to crime.
- 3.4** Distinguish between three types of theories—learning, control, and labeling—that represent social process explanations of crime.
- 3.5** Explain why social conflict theorists believe that crime is a product of powerful groups who dominate less powerful groups to protect their interests.
- 3.6** Summarize the assumptions of feminist theories and how rates of female offending have changed over time.
- 3.7** Describe environmental criminology theories that explain why crime occurs.
- 3.8** Discuss the motives of people committing crimes based upon specific crime types.

ASSESS YOUR AWARENESS

Test your knowledge of theories of criminality and crime by responding to the following seven true–false items; check your answers after reading this chapter.

- 1.** The classical school of criminology maintains that people have free will and choose whether to engage in crime.
- 2.** Research shows that most men carry an extra Y chromosome—the “criminal” chromosome—which makes them more likely to commit crime.
- 3.** According to social disorganization theory, specific characteristics of neighborhoods, not people, are linked to higher rates of criminal behavior.
- 4.** Labeling theorists believe that by labeling people as someone who may potentially commit an offense, we can stop people from committing crimes.
- 5.** Environmental criminologists argue that opportunities play a major role in causing crime.
- 6.** Statistics show that arrests of females who have committed property crimes have increased dramatically over the past several years.
- 7.** Interviews with known burglars reveal they are motivated strictly by financial gain.

Answers can be found on page 401.

Gabby Petito, a 22-year-old woman from North Port, Florida, embarked on a cross-country trip with her fiancé, 23-year-old Brian Laundrie, in June 2021. They drove Petito’s white Ford van across the country, planning to visit state and national parks in the western United States. Petito regularly posted updates about their trip on social media and kept in contact with family members. However, all communication from Petito abruptly stopped during the last week of August. On September 11, after not being able to reach her, Petito’s family reported her missing to their local police department in Suffolk County, New York. On September 19, after a search was initiated by

local and federal law enforcement agencies, human remains matching Petito's description were found in the Bridger-Teton National Forest.¹

The coroner determined that Petito's body had been outside in the wilderness for 3 to 4 weeks before her remains were found. A nationwide manhunt was launched for Laundrie, while authorities tried to piece together facts and a timeline surrounding her disappearance. During the investigation, authorities learned that a 911 call was made by a person who witnessed a man slap a woman in a white van with Florida plates in August. This call led police to stop the van, being driven by Laundrie with Petito as a passenger. Police forced the couple to separate overnight since they suspected domestic assault (although they incorrectly suspected that Petito might have been the offender).

An autopsy revealed that Petito died by manual strangulation. At a press conference, the coroner stated, "This is only one of many deaths around the country of people who are involved in domestic violence, and it's unfortunate that these other deaths do not get as much coverage as this one."² Investigators were never able to interview Laundrie. They found a backpack and notebook belonging to Laundrie near skeletal remains, later determined to be those of the suspect, who died from a self-inflicted gunshot wound to the head, near his home in Florida.

Domestic violence is a serious and pervasive crime. The National Coalition Against Domestic Violence reports that one in three women—and one in four men—have experienced some form of physical violence by an intimate partner in the United States.³ It is important for criminal justice professionals to understand why a person would be motivated to engage in such behavior. While Laundrie's suicide will prevent us from learning more about his motives for killing Petito, understanding the reasons why people commit particular types of crime can be useful to those tasked with preventing criminal acts and prosecuting criminal cases.

Criminologists look for answers concerning why people commit crime and why crime occurs, and their work is a critical part of criminal justice study. As you consider the criminological theories discussed in this chapter, try to answer these questions: Why would someone engage in a crime like domestic violence? And how can we prevent this type of crime from happening in the future?

INTRODUCTION

What causes some people to devote much or most of their lives to preying on and harming others? Is it their "nature" or how they were "nurtured"? How could someone enter an elementary school and kill 26 children and teachers? Or shoot up a movie theater, leaving 12 dead and more than 70 wounded?⁴ Are such people just immoral and cruel? Is crime a product of poverty and need? Congenital defects? Greed? Vengeance?

We humans have always sought to better understand the world around us, and so we seek answers to such questions. We have long sought to unravel the mysteries of human behavior and nature, and the authors of many books have attempted to explain these mysteries. This chapter briefly addresses some of these explanations.

The chapter looks first at the two major, original schools of criminological thought: classical and positivist. It then provides an overview of six major theoretical paradigms used by criminologists to explain criminal behavior and crime. Within each of these paradigms, you will be introduced to specific theories that propose different causes of criminal activity. After looking at theorists' efforts over the past 2.5 centuries to explain crime, the chapter ends with a brief review of offenders' motivations (in their own words) for selected crimes—armed robbery, burglary, and carjacking.

Before delving into the world of criminology, students should ask why this field of study—and its findings—are important to the criminal justice system. An obvious answer is that, by understanding why crime occurs, we can perhaps learn how to better deter and stop crime from happening in the first

place. Although our understanding has improved, crime continues to occur and, given human nature, probably always will. So studies in criminology can provide useful findings to policymakers all along the criminal justice spectrum—from juvenile courts seeking to stop would-be criminals early in life to lawmakers and judges deciding on appropriate sentencing schemes to corrections officials seeking to manage persons on probation, persons who are incarcerated, and persons who are on parole in hopes of reducing recidivism.

CLASSICAL AND POSITIVIST THEORIES

Until the 18th century, criminal behavior was explained by most Europeans in supernatural or quasi-religious terms. Criminal behavior was caused by forces outside the individual, and people who committed criminal acts were deemed “possessed” by the devil. To rid society of such evil, the accused was not allowed to put forth a defense, confessions could be obtained using torture, and the penalty for most offenses was some form of physical punishment or death.

This response to crime changed in the mid-18th century when the classical school of criminology emerged and shifted criminal responsibility away from outside evil forces and onto the individual. Criminality was attributed to an individual’s free will—persons committing crimes made a rational choice to commit those crimes. Then in the 19th century, new theorists, the positivists, argued that crime is caused by factors that individuals cannot control, pointing instead to scientific explanations—biological, psychological, and sociological—as forces that affect free will and decision-making.

The Classical School

Cesare Beccaria published his classic *Essays on Crime and Punishments* in 1764, in which he bemoaned that potential criminals had no way of anticipating the unpredictable nature of the criminal law; attempted to expose the injustices in, and arbitrariness of, the administration of law and punishment; and encouraged reform in the way law was enforced to be more consistent and rational. The **classical school** of criminology evolved from this movement, the main principles of which were as follows:

- Criminal behavior is rational, and most people have the potential to engage in such behavior.
- People may choose to commit a crime after weighing the costs and benefits of their actions.
- Fear of punishment is what keeps most people law-abiding; therefore, the severity, certainty, and speed of punishment affect the crime rate.
- The punishment should fit the crime rather than the offender.
- The criminal justice system must be predictable, with laws and punishments known to the public.

Beccaria and his contemporary, Jeremy Bentham, who argued that the laws should provide “the greatest good for the greatest number,” saw the purpose of punishment to be deterrence, rather than vengeance, and emphasized the certainty of punishment over its severity.⁵ In other words, these early criminologists argued it was most important that people be caught and punished. Creating more severe sanctions was less important; in fact, overly harsh punishments could be detrimental to achieving justice and deterrence. They argued that punishments should “fit the crime” and be proportionate to the harm caused by the offense.

Although classical criminology laid the cornerstone of modern western criminal law as it was formulated from 1770 to 1812,⁶ its influence began to decline in the 19th century, largely because of the rise of science and in part because its principles did not consider differences among individuals or the way crimes were committed.⁷



Cesare Beccaria, an Italian jurist, philosopher, and politician who is best known for his essays on crime and punishment, believed that punishment should be proportional to the crime, that it is better to prevent crimes than to punish them, and that crimes are prevented more effectively by the *certainty* rather than the *severity* of punishment.

Neoclassical Criminology

Classical ideas took on new life in the 1980s when scholars again argued that crimes result from the rational choice of people who have weighed the benefits to be gained from the crime against the costs of being caught and punished (**neoclassical criminology**). They also argued that the criminal law must consider differences among individuals. To a large extent, sentencing reform, criticisms of rehabilitation, and greater use of incarceration sprung from this renewed interest in classical ideas. However, the **positivist school** of thought (positivist criminology) has dominated U.S. criminology since the beginning of the 20th century.



Positivists seek to find the basic cause of one's crimes and believe in rehabilitating offenders rather than punishing them. Prison therapy groups represent one method of rehabilitation.

John Moore/Getty Images News/Getty Images

Positivist Criminology

By the middle of the 19th century, the classical school fell out of favor, in large part because of the expansion of science. In its place emerged positivist criminology—a philosophical approach proposed by French sociologist Auguste Comte—emphasizing the criminal actor rather than the criminal act⁸ and using science to study the offender’s body, mind, and environment. Positivists seek to uncover the basic cause of crime, relying heavily on scientific experts and believing in rehabilitating “sick” offenders rather than punishing them.⁹ Following are some of the tenets of this viewpoint:

- Human behavior is controlled by physical, mental, and social factors, not by free will.
- Criminals are different from noncriminals.
- Science can be used to discover the true causes of crime and to treat offenders.¹⁰

One of the earliest and most famous positivists was Italian criminologist Cesare Lombroso. Working as a physician in the 19th century, he believed that offenders were a product of their abnormal physical features. He referred to offenders as “atavistic,” throwbacks to some earlier stage in human evolution or to an apelike ancestor, and thought they were “born criminal.” Having been influenced by the evolutionary doctrines of Charles Darwin, Lombroso saw in criminals some of the same characteristics that were found in “savages” or “prehuman people”: a slanting forehead, abnormal teeth, excessively long arms and dimensions of the jaw and cheekbones, ears of unusual size, a sparse beard, a twisted nose, woolly hair, recessed eyes (and pronounced supraorbital ridges, or bony structures surrounding the eye sockets), fleshy and swollen lips, excessive vanity, or the presence of tattoos.¹¹

Lombroso’s theories, however, failed to explain crime fully—obviously, many offenders did not possess any, much less all, of these “born criminal” characteristics—so over time, these “revelations” fell out of favor. Nonetheless, for his groundbreaking work that forced people to consider characteristics of the criminal in addition to their offense, Lombroso is today known as “the father of criminology.”¹²

In the sections that follow, you will learn more about how criminologists have attempted to explain crime and criminal behavior. Six major **theoretical paradigms** are presented. It is important to note this is only a brief and partial introduction to criminological theory. Still, you will become familiar with many of our discipline’s most influential theories and theorists, and you should be able to apply these theories to explain specific criminal events.

Case Study 3.1

Ariel Castro—The Cleveland “Monster”

Some people are thought to be purely evil, such as Ariel Castro, who abducted three young women—Amanda Berry, Michelle Knight, and Gina DeJesus—over the course of several years and then imprisoned them in his home in urban Cleveland, Ohio, for more than a decade. He raped, abused, and starved them, while depriving them of simple needs like sunlight, a working bathroom, regular showers, and the ability to see the outside (windows were boarded). He fathered a child with Berry, and he threatened to kill Knight if she didn’t deliver the baby safely. Berry was able to escape one day when Castro made the uncharacteristic mistake of leaving an interior door unlocked and going out, allowing Berry to go to the front door to bang and scream for help. Castro pleaded guilty to 937 criminal counts, including kidnapping, sexual assault, and aggravated murder (for killing at least one unborn child by beating Knight when she was pregnant with Castro’s child).

At his sentencing, Castro told the courtroom he was not a monster, but he was “sick” because he was addicted to pornography. Castro’s view of his own behavior follows the tenets of positivist criminology. He argued he was different from noncriminals due to social factors (in this case, pornography) that influenced his behavior. However, Judge Michael Russo responded with a classic statement of *mens rea* by observing, “You were acquainted with the kidnap victims, and that was a factor in your abduction strategy. You had an outwardly normal relationship with your girlfriend—it’s clear you are able to choose who you wished to victimize.” Judge Russo clearly believed

Castro's behavior could best be explained by classical school criminologists who argue that people choose whether to commit crime, based on their own free will.

In August 2013, Castro was sentenced to life plus 1,000 years, but within a month of his sentencing, he committed suicide by hanging himself in his prison cell. His "house of horrors" was demolished shortly after his sentencing.

Source: Elliott C. McLaughlin and Pamela Brown, "Judge Sentences Cleveland Kidnapper Ariel Castro to Life, Plus 1,000 Years," CNN, August 1, 2013, <http://www.cnn.com/2013/08/01/justice/ohio-castro/>.

PRACTITIONER'S PERSPECTIVE

CRIME ANALYST



Name: DJ Rogers

Position: Crime Analyst

Location: Colorado

What is your career story? I've been a crime analyst in four different law enforcement agencies in Colorado for about 28 years. I started with the first department I worked with right after I graduated with my undergraduate degree.

I was an economics and history major, and I think that at the time the department was looking for an outside perspective. So when I applied, I think they thought it was interesting that I was coming from a different background, and I had some thoughts coming from those areas of study about how my backgrounds cross-applied to criminal justice and to the operation of law enforcement. So they kind of took a chance on me, and I thought I'd do a few years and then go to graduate school. And 28 years later, I'm still here.

Crime analysis is probably unusual in law enforcement settings in that I don't know what it looks like right now, but traditionally, it's probably actually been a field that's been more open and friendly to females than males. You've seen it for a variety of reasons. I don't go to those meetings as much as I used to, but I would bet you there's still more women serving as analysts now than there are guys.

What are some challenges and misconceptions you face in this position? If you talked to a broad cross-section, the challenges that most folks are going to see facing crime analysis is how the whole function of analysis is being defined and integrated in the operation of the department. We're still trying to figure where it fits best, so a lot of analysts in the field struggle with the issue. Another big issue is the information itself. The data you use to do your job is both less than pristine and not consistently documented. Exchanging that information in a meaningful sense between agencies is still a challenge. A lot of work being done in the last few years is focused largely on those issues, though, so they will probably improve.

One of the key myths is that people think what they see in the media is similar or typical to what actually happens in police departments. What the media tend to draw on are actually atypical in real life. The media creates this impression, especially in analysis, that we're always working serial homicides or serial sex assaults, when in fact your average analyst in your average department is going to be largely focused on burglary or motor vehicle theft, among other things. Essentially, we are focused on the other more mundane but more pervasive pattern crimes that are more amenable to analysis. Violent crime is more difficult in those regards.

What directions do you envision your department going in the future? I think that as far as looking at the future of crime analysis, it seems like what we've all struggled with is the concept of actionable intelligence. At the moment, unfortunately, it takes us a week to pull the data together, get the reports, do our analysis, and get the analytical product out there, and by the time that happens, we're 3 days late. So we're seeing that a lot of agencies are starting their own real-time analytical pods (or real-time working groups) in which they do a better job of culling that data from our dispatch systems and turning that around into real-time actionable intelligence.

BIOLOGICAL, TRAIT, AND DEVELOPMENTAL THEORIES

Biological and trait theories explain that criminal behavior is the outcome of physical or psychological differences between persons who commit offenses and those who do not. Biological explanations of crime became unpopular when Lombroso's research was discredited by later scholars. However,

these explanations and others that focus on the link between physical attributes and criminal behavior have regained popularity over time. Biological and trait theories focus on the impact that physical traits (including brain structure and chemistry) and genetics have on a person's propensity to engage in crime.

Like Lombroso, scholars in the first half of the 20th century examined physical differences between persons who have committed crimes and those who have not. William Sheldon studied 200 juveniles experiencing the criminal justice system in Boston and concluded that criminal behavior could be linked to different body types, or somatypes.¹³ He argued that persons committing more serious offenses tend to be athletically built ("mesomorphic" body type), whereas persons who do not commit offenses possess less muscular physical structures. Although later research found at least partial support for this theory,¹⁴ theorists began to acknowledge that other factors, including psychological (e.g., temperament) and social (e.g., gang-involved lifestyles or parental treatment) influences, were also important in explaining criminal behavior and could be used to explain the physical differences observed between persons who commit crimes and those who do not.

During the second half of the 20th century, advances in the field of molecular biology led to the belief that a link might exist between chromosomal abnormality and criminal behavior. For example, most females have two X chromosomes, and most males have an XY set. Some males carry an extra Y chromosome (**XYY chromosome**), and scientists have hypothesized that this "criminal" chromosome produces tall men, generally with below-average intelligence, who behave aggressively or antisocially. Like Lombroso's early theory, studies failed to find conclusive evidence to support the XYY theory.¹⁵ Still, recent research has shown a direct association between a wide variety of traits and criminal activity. These characteristics



Italian criminologist Cesare Lombroso saw in criminals a pattern of physical characteristics that were found in "savages" or "prehuman people."

Cesare Lombroso

include deficits in frontal, temporal, and subcortical brain regions; lower IQ scores; hormone imbalances; and outcomes related to birth complications (e.g., low birth weight and forceps delivery).¹⁶

It is difficult to determine whether criminal behavior is caused by biology or individual traits (nature) or whether it is caused by socialization practices (nurture)—including how children are raised. In response, researchers have conducted studies of identical twins who share the same genetic makeup. Many identical twins are raised together, which could mean they are more likely to spend time together, be treated alike by families and friends, and share more of a common identity than do fraternal twins or other types of siblings.¹⁷ Therefore, researchers have relied on **adoption studies** of identical twins to determine if crime is inherited. Although the evidence is mixed, one large study in Denmark found that only 13.5% of adopted boys had criminal convictions if neither their biological nor adoptive parents had criminal histories. However, 20% of adopted boys had criminal convictions if their biological parents engaged in crime, even though their adoptive parents did not.¹⁸

Almost all scholars now agree that individual traits likely influence criminal behavior. Developmental theories, often referred to as life-course criminology, explicitly acknowledge the impact of traits on human behavior. Most developmental theorists argue that traits are important, but that a person's social environment also matters. When people who are biologically predisposed to crime are raised in environments conducive to crime (e.g., with abusive parents or in high-crime communities), they are most likely to engage in crime. For example, the identical twin study discussed previously found that adopted boys were most likely to commit crime if their biological parents *and* their adoptive parents had criminal histories. The outcome of this combination of criminogenic factors (nature and nurture) is called the **dual hazard prediction**.¹⁹ Developmental theorists attempt to explain the role of traits, in different environments, over the course of a person's life.²⁰

YOU BE THE . . . LEGISLATOR

If biological and trait explanations for crime are true, what public policy decisions should lawmakers and criminal justice professionals make in response? For example, when scientists identified certain hereditary patterns of criminality, lawmakers in Oklahoma required persons who repeatedly committed crimes be sterilized to stop the chain of criminality. These laws were constitutional in the United States until 1942. Consider these more recent research findings:

- Children with a criminal biological father are more likely to have criminal tendencies.
- Childhood attention-deficit/hyperactivity disorder (ADHD) has been linked to adult criminality.²¹

Think about these findings from a lawmaker's standpoint and consider the potential risks and benefits associated with using these findings to enact legislative or policy changes²²:

1. If a person is convicted and fathers a child, should that child be subjected to monitoring or tracking to provide early childhood interventions? Would this be fair to the child?
2. Should parents be mandated to medically treat childhood ADHD to prevent future criminality?
3. Should children be tested for biological traits associated with criminality? If so, what should the government do to or for children who possess these criminal traits?

Source: Skinner v. State of Oklahoma, ex. rel. Williamson, 316 U.S. 535 (1942).

SOCIAL STRUCTURE THEORIES

Social structure theories explain that criminal behavior is caused by the ways in which societies are organized. Social structure theorists maintain that criminal behavior is the product of factors associated with culture and social class—such as poverty, race, family structure, and challenges related to immigration. They argue that these external social factors, not individual biological traits, cause criminality. Two of the most prominent social structure theories are social disorganization theory and strain theory.

Social Disorganization Theory

Social disorganization theory was developed by scholars at the University of Chicago who studied the organization of cities. In the 1930s and 1940s, Clifford Shaw and Henry McKay mapped the home addresses of juveniles who had engaged in delinquent activities. They found that most of these youths lived in neighborhoods with high rates of poverty, diversity (e.g., places where new underrepresented populations were likely to reside), and population turnover (i.e., people continually moving in and out). They argued that these community characteristics weakened core social institutions—including schools, churches, and families—and caused *social disorganization*. Children who live in socially disorganized neighborhoods are less likely to be supervised by adults and more likely to associate with other unsupervised youths, who are exposed to or involved in criminal organizations on the streets (e.g., gangs). The values they learn from established criminals in the absence of parents or other supervising adults lead them to engage in delinquent rather than prosocial behaviors.²³

In their analysis, Shaw and McKay found that levels of delinquency remained remarkably stable in neighborhoods over time, even though different ethnic groups moved in and out of these areas. They concluded that neighborhood characteristics, not the characteristics of individuals, were the cause of delinquent behavior and crime.²⁴ Later theorists and researchers, including Robert Sampson and colleagues in the 1990s, expanded on social disorganization theory and found further evidence to suggest that Shaw and McKay's initial assumption was correct: Neighborhood characteristics cause conditions that increase levels of crime.²⁵

Strain Theory

Building on the work of Émile Durkheim, the famed French sociologist of late 19th century, Robert Merton argued that high-crime societies suffer from *anomie*—a state of normlessness, in which people ignore the existing rules and values of society. Merton argued that social change can cause anomie if rules about appropriate conduct become unclear or if the change makes it more difficult for people to achieve their goals.²⁶ **Strain theory** explains that crime occurs when people living in disadvantaged, dysfunctional, and generally normless families or communities feel as though legitimate opportunities for success and prosperity are out of reach. Merton argued that when society places extreme emphasis on the accumulation of wealth as a symbol of success but does not provide or emphasize legitimate means for achieving wealth (e.g., jobs or education), people feel strain. Some individuals will turn to crime to reach their goals and alleviate feelings of strain.²⁷

Robert Agnew later expanded on Merton's theory and argued that people could experience strain vicariously (i.e., be affected by strain felt by others close to them) and that people could suffer from anticipating future feelings of strain (e.g., worrying about losing a job). Agnew also identified the specific types of strain that are most likely to cause crime, including parental rejection, child abuse and neglect, chronic unemployment, marital problems, homelessness, and criminal victimization, among others.²⁸ Numerous researchers, including Agnew, have found evidence that suggests these strains are linked to criminal behavior.²⁹

YOU BE THE . . . CRIME ANALYST

You were recently hired as a crime analyst for a major metropolitan police department. The department's police chief is particularly concerned about violent crime in her jurisdiction, so you produce a map of all gun violence incidents across the city. As expected, you find these violent incidents cluster in particular places. Some neighborhoods have significantly more violence than others, some street segments within those neighborhoods have significantly more violence than other segments, and some specific addresses on those segments have more violence than other addresses. You believe these maps will be particularly useful for developing new crime-prevention policing strategies.

Having completed an introduction to criminal justice course as part of your undergraduate education, you are familiar with social structure theories of crime. Drawing from your knowledge of these theories, how would you answer the following questions from the police chief?

1. What is more important to understand: the characteristics of persons committing offenses or the characteristics of high-crime places?
2. What factors are causing crime to cluster in particular neighborhoods?
3. Why do youths in these areas become involved in violent crime?
4. What could the police do to try and prevent violent crime, based on the findings of your analysis?

SOCIAL PROCESS THEORIES

Many criminologists believe that social structure theories place too much emphasis on crime committed by poor and disadvantaged members of society. Subsequently, they do not believe that social structure theory adequately explains crime that is committed by more affluent, middle- or upper-class people. Therefore, social process theories argue that any person—regardless of social class, education, or nature of the family, neighborhood, or community—can become a criminal. Three key social process theories are learning theory, control theory, and labeling theory.

Learning Theory

The basis of **learning theory** is simple: People learn how to become criminal. Edwin Sutherland was the first learning theorist. He studied at the University of Chicago (where social disorganization theory was developed) and developed his learning theory, specifically referred to as differential association theory, while trying to explain why characteristics of disorganized areas caused crime. Sutherland also studied white-collar crime and affluent criminals, so he questioned the assumption that neighborhood and individual factors—including poverty, race, age, and mental disorders—caused criminal behavior.

Sutherland's research led him to believe there were social learning processes that could turn anyone into a criminal, anytime or anywhere. He argued that criminal behavior is learned while interacting with others, whether on the streets or in a corporate boardroom. This learning occurs within primary groups (family, friends, peers—one's most intimate, personal companions) and involves learning techniques, motives, drives, rationalizations, and attitudes associated with crime. When a person is exposed to more definitions *favorable* to violation of law than definitions *unfavorable* to violation of law, they will engage in criminal behavior.³⁰

Conducting research to test learning theory is difficult. One of the problems with such research is determining which comes first: the delinquency or the friends who also exhibit delinquent behaviors. It might be that persons are corrupted by hanging out with friends who exhibit delinquent behavior, or it might be that “birds of a feather flock together” and juveniles who commit offenses are more likely to pick friends who will engage in similar behaviors. Still, studies find persons who may commit offenses tend to hang out with others who commit offenses and share positive views of criminal behavior, providing at least partial support for learning theory.³¹

Control Theory

Unlike learning theory, which starts with the assumption that people are born “good” and learn to be “bad,” **control theory** assumes people are born “bad” and must be controlled or learn to control



Strain theorists argue that crime is caused by frustration, hopelessness, and anger resulting from living in families who are disadvantaged and dysfunctional and/or communities where opportunities for success and prosperity are largely nonexistent.

©iStockphoto.com/FrankvandenBergh

themselves to be “good.” Control theorists argue that all people naturally pursue their self-interests and seek pleasure while trying to avoid harm.

In the 1960s, Travis Hirschi proposed a control theory: social bond theory. He argued that instead of asking, “Why do people commit crime?” criminologists should ask, “Why don’t people commit crime?” According to Hirschi, people do not commit crime when they have strong bonds to society. These bonds consist of four elements: (1) attachment to family and prosocial others, (2) commitment to social norms and institutions (e.g., school, work, church), (3) involvement in conventional activities that leave little time to think about or engage in crime, and (4) belief in shared social values and norms. People with weak societal bonds are “free” to follow their natural instinct to seek pleasure, and this might involve engaging in criminal conduct.³²

About 2 decades later, Hirschi collaborated with Michael Gottfredson and developed a second control theory. Gottfredson and Hirschi’s “general theory of crime” maintains that criminal behavior occurs when parents fail to instill self-control in their children. If children are not taught to resist their natural impulses, they will be unable to control their desire for immediate gratification. Gottfredson and Hirschi explain that low levels of self-control lead to criminal behavior, and it also causes many who commit offenses to engage in other dangerous or risky activities, such as excessive drinking, smoking, fast driving, and unprotected sex.³³

Hirschi’s social bond theory is one of the most influential and tested theories of juvenile delinquency. Gottfredson and Hirschi’s theory of self-control has also been the focus of extensive research. Over the past several decades, studies have supported the basic tenets of control theory. In reviewing the literature, some researchers argue that control theory has received more empirical support than any other theory of crime.³⁴

Labeling Theory

Why is the possession of cocaine labeled a criminal act, while possession and even home manufacturing of alcohol is not? Why is it that one who shoots a bald eagle is guilty of committing a felony federal offense (with maximum penalties of up to \$100,000 and/or 1 year in federal prison),³⁵ while the same man who, the day before, killed a large elk might well be labeled a skilled “sportsman” and praised for his marksmanship? Such questions underscore **labeling theory**. This theory encourages us to consider why particular acts are labeled as criminal and how labels can affect future criminal behavior.

Labeling theorists believe that no criminal act is deviant in and of itself; rather, behavior is considered deviant—and labeled as a crime—only because some group has determined that certain behavior should be criminalized. Labeling theorist Edwin Lemert claimed that people who experience stigmatizing social reactions to their behaviors will begin to identify themselves as deviant. Once their identity is affected and they accept the label as truth, people will engage in crime simply because they see themselves as criminals (a reaction that Lemert called “secondary deviance”).³⁶ Howard Becker argued that once rule-breakers accept the deviant label as their “master status” (e.g., “I am a gang member” or “I am a thief”), a self-fulfilling prophecy begins, and they are more likely to engage in future criminal behavior.³⁷

Tests of labeling theory have found that criminal justice interventions are often associated with negative outcomes. For example, research suggests that juveniles who are subjected to formal criminal sanctions are more likely to become involved in street gangs and with peers who partake in deviant behaviors and subsequently engage in serious delinquency.³⁸ In general, there is considerable evidence to suggest that people who are subjected to criminal sanctions are more likely to commit crime in the future, a finding that is used to support labeling theory.³⁹

SOCIAL CONFLICT THEORIES

Some criminologists in the 1960s challenged the theoretical paradigms mentioned previously on the grounds that these theories did not do enough to highlight the effects of economic and racial inequality. **Social conflict theory**, sometimes also called radical or critical theory, maintains that the criminal

justice system serves the interests of the dominant groups and classes of a society, and the police can do nothing more than act repressively against those who challenge the established order.⁴⁰ The working class, women (particularly those who are single heads of household and are socially isolated), and people of color (those from non-English-speaking backgrounds and refugees, in particular) are the most likely to suffer oppressive treatment based on class division, sexism, and racism. Criminal laws are designed by those who are in power, and the laws are intended to oppress those who are not in power. These theorists argue that affluent and high-status people commit as many crimes as do the oppressed, but the latter groups are more likely to be apprehended and punished.

One of the earliest conflict theorists was George B. Vold, who believed that many behaviors are defined as crimes because it is in the best interest of the dominant groups to do so.⁴¹ According to Vold and other conflict theorists, crime is a product of group struggle. Humans are by nature social beings, forming groups out of shared interests and needs. The criminal law serves the goals of the dominant group, which controls the legislative process. When the behaviors of subordinate groups come into conflict with the dominant group's interests, they are punished by the criminal justice system.⁴²

More recently, conflict theorists have argued that capitalism causes criminal behavior. For example, Elliott Currie draws attention to violent crime in the United States to provide evidence that capitalism (a form of social conflict with “winners” and “losers” engaged in economic competition) is linked to crime. Elliott argues that if governments in capitalist societies do not take steps to limit inequality or provide a “safety net” for those who are unsuccessful at accumulating wealth, then the capitalist system will produce high rates of serious violent crime.⁴³

FEMINIST THEORIES

It has been said that “crime is a young man’s game.”⁴⁴ Women commit far fewer crimes (especially violent crimes) than their male counterparts, but women represent one of the fastest-growing populations of incarcerated people in the United States. **Feminist theory**, sometimes classified as part of the aforementioned social conflict theories, attempts to explain why women do not offend at the same rate as men, why they are more likely to commit different types of offenses than men, and why their rates of offending continue to increase over time. Freda Adler, criminologist and author of *Sisters in Crime*, wrote the following in 1975:

Women are no longer indentured to the kitchens, baby carriages, or bedrooms of America. There will be no turning back to the days when women found it necessary to justify their existence by producing babies or cleaning houses. Women have chosen to desert those kitchens and plunge exuberantly into the formerly all-male quarters of the working world.⁴⁵

At about the time Adler wrote those words, women were entering the labor force in large numbers. With passage of the Equal Employment Opportunity Act in 1972,⁴⁶ women were given the right to compete with men for jobs and promotions and to receive the same compensation upon being hired. Later, the Pregnancy Discrimination Act of 1978,⁴⁷ which required employers to treat pregnancy, childbirth, and related medical conditions in the same manner as any other temporary disability, and the Family and Medical Leave Act of 1993,⁴⁸ which allowed employees to take 12 weeks of unpaid leave for the birth or adoption of a child, helped women to participate in the labor force. By extension, these increases in labor force participation of women would become related to their significantly higher crime rates.⁴⁹

Adler’s work, as well as Rita Simon’s *Women and Crime*,⁵⁰ proposed that the emancipation of women and increased economic opportunities for women allowed women to be as crime-prone as men. Some scholars argue that empirical evidence does not support these claims.⁵¹ These theories have also invited much criticism from other feminist writers, who argue instead that feminism has made female crime more visible through increased reporting, policing, and sentencing of females who commit offenses.⁵²



The study of crime has historically focused on male offenders, but the recent extent and nature of female criminality—more predatory and violent—has brought them more attention from criminologists as well.

Scott Houston/Alamy Stock Photo

Table 3.1 shows 5-year arrest trends for women. The table shows that, as with the nation at large, arrests of women have declined overall—but mostly due to large decreases in property crimes (largely because of decreased arrests related to larceny-theft and disorder-related crimes). Arrests of women for violent crime have increased by more than 4%, with the largest percentage increase in arrests for rape. Fluctuations in crime and arrest numbers are always subject to error due to reporting issues, but these general trends are worth examining and interpreting within our theoretical explanations.

TABLE 3.1 ■ Five-Year Arrest Trends for Women

Offense Charged	2015	2019	Percentage Change
TOTAL ¹	1,794,697	1,697,619	−5.4
Violent crime ²	61,175	63,706	+4.1
Property crime ²	353,191	268,158	−24.1
Murder and nonnegligent manslaughter	749	804	+7.3
Rape	360	480	+33.3
Robbery	7,764	7,387	−4.9
Aggravated assault	52,302	55,035	+5.2
Burglary	25,407	21,917	−13.7
Larceny-theft	316,547	232,996	−26.4
Motor vehicle theft	10,152	12,068	+18.9
Arson	1,085	1,177	+8.5
Other assaults	186,931	184,086	−1.5
Forgery and counterfeiting	11,833	9,896	−16.4
Fraud	32,067	26,162	−18.4
Embezzlement	5,243	4,580	−12.6

Offense Charged	2015	2019	Percentage Change
Stolen property; buying, receiving, possessing	12,102	12,914	+6.7
Vandalism	25,711	26,062	+1.4
Weapons; carrying, possessing, etc.	7,815	9,038	+15.6
Prostitution and commercialized vice	10,877	6,710	-38.3
Sex offenses (except rape and prostitution)	2,225	1,628	-26.8
Drug abuse violations	207,400	243,229	+17.3
Gambling	567	442	-22.0
Offenses against the family and children	16,874	15,946	-5.5
Driving under the influence	160,499	152,119	-5.2
Liquor laws	48,555	31,493	-35.1
Drunkenness	52,526	44,484	-15.3
Disorderly conduct	64,400	56,824	-11.8
Vagrancy	3,224	2,889	-10.4
All other offenses (except traffic)	525,252	533,940	+1.7
Suspicion	211	70	-66.8
Curfew and loitering law violations	6,230	3,313	-46.8

Source: Federal Bureau of Investigation, "Table 35. Five-Year Arrest Trends, by Sex, 2015–2019," *Crime in the United States—2019* (Uniform Crime Reporting Program), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-35>.

1. Does not include suspicion.
2. Violent crimes in this table are offenses of murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. Property crimes are offenses of burglary, larceny-theft, motor vehicle theft, and arson.

ENVIRONMENTAL CRIMINOLOGY THEORIES

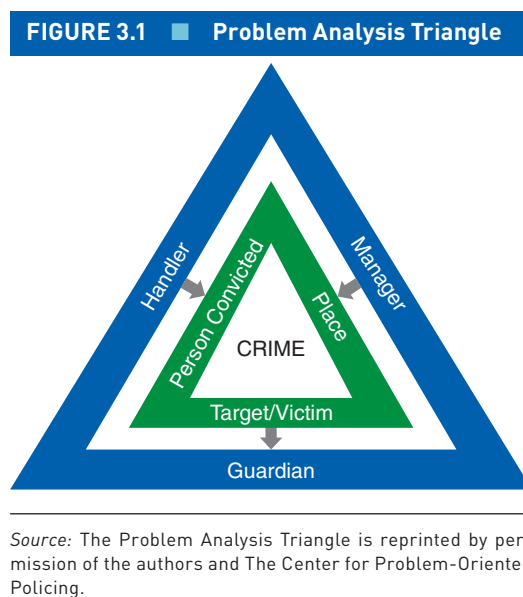
Environmental criminology, also called crime science, is one of the newest theoretical paradigms within our discipline. Rather than trying to explain criminal behavior, environmental criminology theorists attempt to explain patterns of crime events and focus on how offenders find and choose their crime targets. These theories assume that opportunity is a root cause of crime; people cannot commit crime if opportunities for such behavior are restricted or blocked. Two of the most prominent environmental criminology theories are routine activity theory and situational crime prevention.

Routine Activity Theory

In the 1960s and 1970s, violent crime began to increase dramatically. From a traditional criminological perspective, this was unexpected. In general, social conditions were improving. Unemployment rates were dropping, graduation rates improved, college enrollments were increasing, and the average family income was on the rise. Lawrence Cohen and Marcus Felson suggested the increase in crime could be explained by changes in people's daily routine activities.⁵³ Following World War II, people were more likely to spend time away from home. For example, women were entering the workforce, more people had jobs or attended college, and more people spent time away traveling and on vacation with their families.

Cohen and Felson's research demonstrated that changes in routine activities were associated with higher rates of crime (e.g., burglaries). They used this finding to support their proposed

routine activity theory. The original version of this theory argued that three elements must converge in time and space for a crime to occur: A person motivated to commit a crime must find a suitable target in the absence of a capable guardian. Since the theory was first proposed in 1979, Felson and John Eck introduced additional elements that influence crime, and the entire theory is represented by the crime triangle, also called the problem analysis triangle, presented in Figure 3.1.⁵⁴ Guardians can protect targets, handlers can control persons committing crimes, and managers are responsible for creating safe places.



Many studies published after Cohen and Felson's initial analysis report findings consistent with routine activity theory. Recent studies have found support for the theory in a variety of contexts. For example, one study found that routine activities on the internet could be used to predict who was most likely to be a target of internet fraud.⁵⁵

Situational Crime Prevention

Ronald Clarke argues that crime opportunities can be blocked by manipulating features of physical and social environments. In his theory, called **situational crime prevention**, he focuses attention away from criminal dispositions, or the characteristics of people that might make them more likely to engage in crime. Instead, Clarke argues all people have the potential to commit crimes. According to this theory, crimes occur when they are easy to commit, carry low risks of detection, provide large rewards, provoke people into action (e.g., committing a violent act), and involve behaviors that can be easily justified (e.g., "I only stole something; I didn't hurt anyone").

For each of the five dimensions of criminal opportunity—effort, risk, reward, provocations, and excuses—situational crime prevention offers five prevention techniques. Table 3.2 highlights these dimensions and associated techniques. Police and others interested in preventing a specific crime in a particular place can use this table to consider possible interventions that would block criminal opportunity or make crime less attractive to potential offenders.

Evidence to support situational crime prevention usually comes in the form of case studies. Case studies typically involve detailed descriptions of a particular crime problem and the types of activities used to address the problem. These studies reveal that certain situational crime prevention techniques have been effective in reducing a wide variety of crimes, including robberies, burglaries, auto thefts, obscene phone calls, welfare and refund frauds, graffiti, and assaults.⁵⁶

TABLE 3.2 ■ Twenty-Five Techniques of Situational Crime Prevention

Increase the effort	<ol style="list-style-type: none"> 1. Harden target 2. Control access to facilities 3. Screen exits 4. Deflect offenders 5. Control tools/weapons
Increase the risks	<ol style="list-style-type: none"> 6. Extend guardianship 7. Assist natural surveillance 8. Reduce anonymity 9. Use place managers 10. Strengthen formal surveillance
Reduce the rewards	<ol style="list-style-type: none"> 11. Conceal targets 12. Remove targets 13. Identify property 14. Disrupt markets 15. Deny benefits
Reduce provocations	<ol style="list-style-type: none"> 16. Reduce frustrations and stress 17. Avoid disputes 18. Reduce arousal and temptation 19. Neutralize peer pressure 20. Discourage imitation
Remove excuses	<ol style="list-style-type: none"> 21. Set rules 22. Post instructions 23. Alert conscience 24. Assist compliance 25. Control drugs and alcohol

Source: Adapted from Center for Problem-Oriented Policing, "25 Techniques of Crime Prevention," www.popcenter.org/25techniques.

Going Global 3.1

International Environmental Criminologists

One of the most recently proposed environmental criminology theories was developed by Swedish criminologist Per-Olof H. Wikström. Wikström holds many positions, including professor of ecological and developmental criminology at the University of Cambridge and professorial fellow of Girton College. His theoretical ideas have been shaped largely by his involvement in longitudinal research (in this case, research that follows the same group of people over a long period of time). He has studied the development of young people in the United Kingdom to better understand what causes crime and how we can prevent it.

Wikström's *situational action theory* builds on the dual hazard prediction argument (discussed earlier in this chapter) and suggests that whether or not a person engages in crime depends on the settings they encounter (the types of opportunities discovered) and how the individual perceives these settings (whether their moral beliefs allow the person to consider crime as an option). This is

only a small piece of Wikström's larger theory, but it should help to illustrate how he draws together several different theories of crime, including learning, control, and routine activities theories.

Among his many other prestigious awards, Wikström received the 2016 Stockholm Prize in Criminology for his outstanding achievements in criminological theory and research.

Source: For a more comprehensive overview of situational action theory, see Per-Olof H. Wikström, "Character, Circumstances, and the Causes of Crime," in A. Liebling, S. Maruna, and L. McAra (Eds.), *The Oxford Handbook of Criminology* (Oxford University Press, 2017), pp. 415–444.

IN THEIR OWN WORDS: VOICES OF PEOPLE WHO HAVE OFFENDED

With a background in some of the major criminological theories for why people commit crimes, this is a good opportunity to consider the motives and methods people offer to explain their criminal behavior. Using a variety of field research methods (including interviews with those who have committed offenses, incarcerated individuals, and people who are on probation and parole), researchers have allowed us to learn from those who have actually offended—committing armed robbery, burglary, and carjacking—and thus narrow the “distance” between students and these subjects.

Armed Robbery

The motive underlying the crime of armed robbery is clear: financial gain (and another long-standing dynamic—temptation—related to this book's focus on ethics). Unlike perpetrators of most forms of street crime, those committing armed robbery are never secret or ambiguous. And like the crime of carjacking, discussed later, the crime of robbery bridges property and violent crimes.⁵⁷ An individual committing armed robbery must also create the illusion of impending death or serious injury in the victim's mind.

By announcing their intentions to rob, these individuals believe they are committing themselves irrevocably to the offense; that is the “make or break” moment, and they must establish dominance over the victims and convince them they are not in a position to resist—displaying a weapon usually precludes the need to do much talking.⁵⁸ The most difficult aspect of armed robberies, according to those who commit them, is the transfer of goods. Here, robbers must keep their victims under strict control while attempting to make sure they have obtained everything of value; it must be done quickly, lest the police or a passerby discover the act.⁵⁹ Finally, the individual committing this offense must escape—another difficult stage of the robbery. An individual committing armed robbery must maintain their control over their victims while increasing their distance from them. This can be accomplished either by fleeing—possibly bringing attention to themselves or allowing their victims to raise an alarm—or by forcing their victims to flee. The latter allows an individual committing armed robbery to leave the scene in a leisurely manner.⁶⁰

Burglary

People committing burglary, like those committing armed robbery, are motivated primarily by the need for money to maintain their “high-living” lifestyle; however, they may also be motivated by noneconomic reasons, including the “thrill” of the act, as well as by revenge.⁶¹ An individual committing burglary, then, while usually being prompted by a perceived need for cash, may also derive psychic rewards as a secondary benefit, finding the crime to be exciting. Some also commit residential burglaries to get even with someone for a real or imagined wrong—an attack on one's status, identity, or self-esteem. For example, a person committing burglary can have an argument over a traffic or parking matter and then follow the victim home; later, after learning the victim's routine, they may burglarize the person's home to settle the “grudge”—possibly even destroying more goods than are removed.⁶²

Case Study 3.2**Application of Crime Theories**

For each of the following scenarios, determine which of the theories described in this chapter might be applied to understand the person's motivation for engaging in criminal behavior.

- An employee in a county treasurer's office has developed a means of "juggling the books" and circumventing expenditure controls in such a way as to embezzle county funds. She examines the risks of doing so (i.e., engaging in unethical behavior, getting arrested) against the benefits that would be derived from committing the crimes (i.e., taking hundreds of thousands of dollars quickly). She has also determined that punishment for such crimes is not "swift and certain" because her methods would be difficult to detect (and, to her knowledge, embezzlers receive relatively light punishments). She also perceives that she lives in a society that values people who are financially successful and that the legal means for attaining such success are otherwise unavailable to her. She thus embezzles the funds.
- A young woman attending college desires to complete her education and secure a successful career. With financial obstacles in the way, she weighs the benefits and drawbacks of employment with a local "dating service," which she has learned is actually a cover for women to engage in acts of prostitution. One deterrent is that, if arrested, she would be deemed a less-than-acceptable member of society; however, she also perceives that punishments in such cases are typically light. At the same time, she is aware that society reveres those who become educated, obtain a good position, and live comfortably. To do so, however, she must somehow find the means to afford her tuition and living expenses. In the end, she opts to take the position with the dating service, thus risking being arrested and labeled as an outcast in order to achieve her goals.
- A 16-year-old boy is contemplating whether to drop out of school and join a local gang. He knows that to do so he will have to suffer painful initiation rites and that the lifestyle poses considerable dangers. Conversely, he is also aware that his city's policing of gangs is relatively lax, punishment is not certain, and financial rewards are promising. His legal options for obtaining lucrative employment and financial comfort are limited if not altogether blocked, given his likewise limited (i.e., below-average) education and training. After considering his options and looking at both the benefits and the potential disadvantages, he decides the benefits outweigh the deterrents, and he joins the gang.

**YOU BE THE . . .
CRIMINOLOGIST**

Richard R. is a 24-year-old white male convicted of the murder and sexual assault of a young woman; he is currently on death row. Richard's childhood includes sexual abuse by an uncle and lengthy exposure to substance abuse by his parents. He relates that these experiences contributed to his own sexual deviance and substance abuse and prevented him from developing the social skills necessary to sustain a normal, healthy adult relationship with any family members or peers. As a result, his teenager years were marked with such deviant acts, including violence against family members and male and female acquaintances. Over time, "acting out" physically evolved into full-blown, felonious victimization, which led to his current crimes, incarceration, and sentencing. He had long fantasized about violence and killing others, usually by strangulation or with a knife; over time, these fantasies became so prevalent that he eventually lacked the ability to distinguish between reality and fantasy, often misperceiving others' words and actions. He has been in and out of mental health care facilities since his early teens, at which time he was diagnosed as suffering from acute depression, suicidal thoughts, long-term substance abuse, and interpersonal problems.

When medicated, Richard has appeared able to control his behaviors; however, when not medicated he would typically revert to his destructive, antisocial behaviors.

During his time on death row, Richard has demonstrated only one episodic break with reality and acute depression—when told a state court had denied his appeal. He presents as very docile and now appears to embrace religion, which seemingly gives him a much calmer demeanor and an acceptance of others and his situation. He comprehends why he is on death row, has been able to assist in his legal appeals, and demonstrates a low level of depression (beyond that which is normal for such incarcerated persons). He indicates remorse for his past victims—the murdered woman, in particular—and seems convinced that if he is eventually executed, his spiritual body will live on in a peaceful afterlife.

1. How would a classical criminologist's explanation differ from a positivist criminologist's explanation of Richard's behavior?
2. Which social process theory—learning, control, or labeling—do you believe best explains why Richard committed sexual assault and murder?
3. How could these crimes have been prevented, according to environmental criminology theories?
4. In sum: Is Richard a criminal in every sense, morally and legally deserving of capital punishment?

Carjacking

According to one study,⁶³ except for homicide, “probably no offense is more symbolic of contemporary urban violence than carjacking.” Indeed, following the 1992 murder of a woman when two men commandeered her car in Washington, D.C., carjacking was made a federal crime punishable by up to 25 years in prison.⁶⁴ Unlike most robberies, carjacking is directed at an object rather than a person; still, weapons are used in two thirds to three fourths of carjackings.⁶⁵

An individual who carjacks is motivated by two primary objectives: opportunity (i.e., weighing potential risks and rewards) and situational inducements (peer pressure, need for cash or drugs, or revenge). They typically have a precarious day-to-day existence, exacerbated by “boom or bust” cycles, and are always under some degree of financial pressure. The sale of stolen vehicles and parts can be very lucrative, with the person who has carjacked either selling the car parts or delivering the car to a “chop shop,” where it will be stripped. Items of value include tire rims, hubcaps, and stereos, for which the average person committing carjacking will be paid about \$1,750 per car.⁶⁶

IN A NUTSHELL

- Criminology offers explanations for crime. Research grounded in criminological theory provides evidence for policymakers (e.g., lawmakers, police, judges) who develop interventions to reduce crime.
- The classical school of criminology was the first attempt to explain crime in rational terms. Theorists postulated that criminal behavior is rational; people have free will to choose whether they will commit crime; punishments should fit the crime; and justice must be predictable. The more recent reemergence of the classical school (in the form of neoclassical criminology) encouraged sentencing reform, criticisms of rehabilitation, and greater use of incarceration.
- The positivist school of thought, which has dominated U.S. criminology since the beginning of the 20th century, uses science to study the body, mind, and environment of persons committing criminal offenses to determine how they could be rehabilitated. It is believed that human behavior is controlled by biological traits and social factors, not by free will.
- Biological and trait theories of crime offer that the causes of crime are found in the biological makeup of persons committing offenses and are the result of some biological element or defect; persons are *born* and not *made* by their home or social environment. People are most likely to

engage in crime if they possess criminogenic traits and are raised in environments that promote criminal behaviors.

- Social structure theories of crime suggest that criminal behavior is influenced by the ways in which societies are structured. For example, socially disorganized neighborhoods have weak social institutions, and these areas are more likely to experience high rates of crime. Individuals who live in societies with weak social norms are less likely to pursue goals through legitimate means and more likely to commit crimes if blocked or restricted access to legitimate means produces feelings of strain.
- Social process theories of crime argue that criminal behavior is the product of interactions with others. Crime can occur because of learned behavior, lack of controls or bonds with others, or negative societal reactions that label persons who offend and ultimately affect their identities and future behaviors.
- Social conflict theories of crime explain that factors such as economic and racial inequality generate crime. Behaviors that threaten the interests of powerful groups are labeled as crimes. Less powerful groups are subjected to criminal sanctions when their actions threaten the established order.
- Feminist crime theories explain why women commit fewer and different crimes than men and why they might be subjected to criminal justice sanctions for different reasons than men.
- Environmental crime theories maintain that opportunity is a necessary condition for crime. Crime occurs based on the routine activities of groups and individuals and attractiveness (or unattractiveness) of specific crime opportunities.
- In their own words, persons who commit crimes explain and rationalize their acts in a variety of ways, including financial gain, the need to maintain street status and a partying lifestyle, revenge, and “thrill seeking.”

KEY TERMS

Adoption studies (p. 61)	Positivist school (p. 57)
Classical school (of criminology) (p. 56)	Routine activity theory (p. 68)
Control theory (p. 63)	Situational crime prevention (p. 68)
Dual hazard prediction (p. 61)	Social conflict theory (p. 64)
Feminist theory (p. 65)	Social disorganization theory (p. 62)
Labeling theory (p. 64)	Strain theory (p. 62)
Learning theory (p. 63)	Theoretical paradigm (p. 58)
Neoclassical criminology (p. 57)	XXX chromosome (p. 60)

REVIEW QUESTIONS

1. What were the prevailing beliefs concerning the causes of crime prior to the mid-1700s?
2. How did Cesare Beccaria and the classical school form the foundation for explaining crime in more rational terms?
3. What were the major contributions of the positivist school of criminology in attempting to explain criminality?
4. How would you describe the link between biology and crime?
5. How do social structures influence criminal behavior?
6. What is the difference between the three major social process theories: learning, control, and labeling?

7. Why are less powerful groups more likely than dominant groups to be subjected to criminal sanctions, according to social conflict theories?
8. Why did early feminist theorists believe that women would eventually engage in the same amount of crime as men?
9. Why do environmental criminologists argue that opportunity is an important cause of crime?
10. What is one difference and one similarity between the motives of someone who commits robbery and the motives of someone who commits burglary?

LEARN BY DOING

1. Assume that our legal system is neoclassical: People make a rational choice to commit crimes after weighing the benefits to be gained against the costs of being caught and punished, but the criminal law must take into account differences among individuals. You are engaged in a class debate concerning the following resolution: “Our legal system has struck an excellent balance between holding people responsible for their crimes and allowing them to be excused for their crimes.” Choose a side and stake out your argument.
2. Your criminal justice professor hands out the following scenario: John, age 14, is on an errand for his parents (who are in a lower socioeconomic class) when he decides to stop at a crafts shop and look at model cars and airplanes—a hobby he greatly enjoys. While in the store, he puts two small bottles of model paint in his pocket and leaves, but he is quickly stopped by a clerk as he attempts his escape. Explain the possible reasons for John’s actions in view of the biological, social process, and environmental criminology theories of crime discussed in this chapter.
3. The legalization of marijuana continues to be a highly controversial issue. Describe how the social conflict theories of crime might be used to explain illegal marijuana use.
4. Imagine that you work for a policymaker. You read a study that finds providing housing vouchers to move families from disadvantaged areas to more affluent areas reduces juvenile arrests for violent crime.⁶⁷ Explain which theoretical paradigm supports this finding and what other policies or policy changes stemming from this paradigm you might recommend to your boss to reduce crime.



©iStockphoto.com/gorodenkoff



ETHICAL ESSENTIALS

Doing Right When No One Is Watching

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 4.1 Articulate legitimate ethical dilemmas that arise with police, courts, and corrections practitioners.
- 4.2 Explain the philosophical foundations that underlie and mold modern ethical behavior.
- 4.3 Discuss the application of ethical standards in policing.
- 4.4 Explain the importance of ethics in the court system.
- 4.5 Delineate the unique ethical considerations and obligations that exist with federal employees.
- 4.6 Describe the various aspects of ethics within the corrections field.
- 4.7 State what ethical tests can help criminal justice students and practitioners address ethical dilemmas.

ASSESS YOUR AWARENESS

Test your knowledge of ethics by responding to the following seven true–false items; check your answers after reading this chapter.

- 1. The term “ethics” is rooted in the ancient Greek idea of “character.”
- 2. The “ends justify the means” philosophy is typically a good, safe philosophy for the police and judges to follow.
- 3. Communities sometimes seem to tolerate questionable police behavior, if it is carried out to benefit the greater public good (such as dealing with violent gang members).
- 4. During an oral interview, applicants for policing jobs should *never* indicate a willingness to “snitch” on another officer whom they observe doing something wrong.
- 5. The receipt of gratuities by criminal justice personnel is a universally accepted practice.
- 6. Whistleblowers who expose improper acts of their coworkers now have no legal protection.
- 7. Because of their constitutional obligations, prosecutors and defense attorneys are not bound to the same ethical standards as other criminal justice employees.

Answers can be found on page 401.

Does it violate ethical standards for police recruits—and off-duty officers—to smoke marijuana (also known as cannabis)? This question, of course, now arises given that as of mid-2022, 37 states allowed for the *medical* use of cannabis products and 18 states and the District of Columbia had enacted legislation to regulate cannabis for *nonmedical* use.¹

This is also a thorny issue for several reasons, including that (1) marijuana use has long been one of the primary disqualifiers of police applicants; (2) police officers have traditionally been held to a different standard and are subject to different laws than the public because their work involves firearms and life-and-death decisions; and (3) while police recruits and officers might reside in a state where marijuana use is legal, marijuana currently remains a federal offense as a Schedule 1 substance under the Controlled Substances Act.²

In a growing number of states, past cannabis use alone no longer disqualifies a candidate from becoming a police officer. In fact, a relaxed marijuana policy is often essential in agencies where vacant positions are difficult to fill and in order to widen the recruitment pool, as well as the fact that societal attitudes are changing. As an example, even the U.S. Drug Enforcement

Administration (DEA) bars those who have experimented with or used narcotics from becoming agents, but it can make exceptions “for applicants who admit to limited youthful and experimental use of marijuana.”³ Other federal law enforcement agencies have changed their stance on marijuana consumption among their employees.

In sum, persons considering applying for a federal, state, or local police position should assume marijuana use is still frowned on and the Controlled Substances Act is governing. Although state laws are changing and vary from state to state and are relaxing in many, above all, persons wanting to become recruits and then police officers need to be completely clean to be eligible to apply. Assume drug tests will be done preemployment, and people who test positive for illegal drug use will not be accepted in the police agency. Many agencies, for example, still require that applicants must not have used, ingested, and/or possessed any illegal drugs or marijuana (including medical marijuana) during the preceding year.⁴

Consider the following questions:

- Should police recruits be disqualified and active officers be subject to discipline for *medical* marijuana usage?
- Assume an officer lives in a state where recreational marijuana use does not violate the law. Should they still be subject to their agencies’ conduct policies, which generally prohibit the use of illegal drugs, and thus be disciplined or terminated?

INTRODUCTION

Just as regular practice is essential to being a renowned musician and a perfect cake is essential to having a beautiful wedding, so, too, is ethics essential to being a criminal justice practitioner. A Latin term that might be used to describe this relationship is *sine qua non*—“without which, nothing.” A fundamental knowledge of ethics, as well as some guideposts concerning what constitutes unethical behavior, is an important topic in today’s society and for all criminal justice students—not only to guide their own behavior but also because unethical behavior at times appears to permeate contemporary U.S. politics/government, business, and sports.

What specific behaviors are clearly unethical for criminal justice employees? What criteria should guide these employees in their work? To what extent, if any, should the public allow criminal justice employees to violate the public’s rights in order to maintain public order?

This chapter attempts to address these questions and examines many types of ethical problems that can and do arise in police departments, courts, and corrections agencies. The focus is necessarily on the police, who find themselves in many more situations where moral dilemmas and opportunities for corruption and brutality can occur than do judges and corrections personnel.

This is not a black-and-white area of study; in fact, there are definitely “shades of gray” for many people where ethics is called into question. Also problematic is that some people who are hired into criminal justice positions simply are not of good character. Furthermore, remember that we cannot *train* people to have high ethical standards, nor can we infuse ethics intravenously. In sum, character and ethics are largely things that people either have or don’t have.

GOOD EXAMPLES OF BAD EXAMPLES

To frame the concept of ethics and demonstrate how one’s value system can easily be challenged in criminal justice work, consider the following scenarios, all of which are based on true events, and what you might deem to be an appropriate response and punishment (if any) for each:

- *Police:* A Chicago police officer was reprimanded for violating rules that prohibit officers from making political statements while on duty. Specifically, he had posted on social media a picture of himself, in uniform, holding an American flag and a homemade sign

that read, “I stand for the anthem. I love the American flag. I support my president and the 2nd Amendment.” But the reprimand only seemed to intensify his rhetoric, as he began posting inflammatory material about women, welfare recipients, and those who disagree with his politics. He also tangled with social media users, saying, “Keep listening for that knock on the door,” and often boasted that he would continue to avoid serious punishment. His superiors twice tried to fire him, though he appealed those efforts and won. “The police dept didn’t and *can’t* fire me,” he wrote. The officer is one of the most disciplined officers in the department, having been suspended seven times for a total of 111 days.⁵

- *Courts:* For several weeks, a wealthy divorcée receives menacing telephone calls that demand social dates and sexual favors. The caller’s voice is electronically disguised. The suspect also begins stalking the woman. After working several clues and surveillances at the victim’s home, you, a federal agent, finally make contact with a suspect and determine he is the chief judge of the state’s supreme court. Upon confronting him, you are told by the judge to “forget about it, or you’ll be checking passports in a remote embassy.”⁶
- *Corrections:* A 2021 study found that, due to obvious limitations on isolation and treatment, federal and state prisons had 199.6 COVID-19 deaths per 100,000 persons who are incarcerated, compared with 80.9 in the U.S. population, and that incarcerated persons are in general much sicker than they need to be and dying unnecessarily painful deaths. Meanwhile, other traditional forms of mistreatment continue to be uncovered; for example, 31 corrections officers and supervisors in New Jersey were suspended for abuses in its only institution for women (one being beaten so badly while handcuffed that she is now confined to a wheelchair); in addition, confined persons who are most vulnerable to abuse are juveniles, who number about 52,000 and can be locked in isolation without their parents being informed (nor are they typically *required* to be informed) of their child’s treatment; finally, another area for potential abuse is unpaid prison labor, with persons who are incarcerated doing everything from making candy to busting up sidewalks—often in unbearable heat and without sufficient breaks or food.⁷

PHILOSOPHICAL FOUNDATIONS

The term “ethics” is rooted in the ancient Greek idea of “character.” Ethics involves doing what is right or correct, and the term is generally used to refer to how people should behave in a professional capacity. Many people would argue, however, that no difference should exist between one’s professional and personal behavior. In other words, ethical rules of conduct should apply to everything a person does.

A central problem with understanding ethics concerns the questions of “whose ethics” and “which right.” This becomes evident when one examines controversial issues such as the death penalty, abortion, use of deadly force, and gun control. How individuals view a particular controversy depends largely on their values, character, or ethics. Both sides of controversies such as these believe they are morally right. These issues demonstrate that, to understand behavior, the most basic values must be examined and understood.

Another area for examination is **deontological ethics**. The word “deontology” comes from two Greek roots, *deos*, meaning “duty,” and *logos*, meaning “study.” Thus, deontology means the study of duty. When police officers observe a violation of law, they have a duty to act. Officers frequently use this duty as an excuse when they issue traffic citations that appear to have little utility and do not produce any great benefit for the rest of society. For example, when an officer writes a traffic citation for a prohibited left turn made at 2:00 a.m. when no traffic is around, the officer is fulfilling a departmental duty to enforce the law. From a utilitarian standpoint (where we judge an action by its consequences), however, little if any good was served. Here, duty, and not good consequences, was the primary motivator.

Immanuel Kant, an 18th-century philosopher, expanded the ethics of duty by including the idea of “good will.”⁸ People’s actions must be guided by good intent. In the previous example, the officer who wrote the traffic citation for an improper left turn would be acting unethically if the ticket was a response to a quota or some irrelevant motive. However, if the citation was issued because the officer truly believed it would result in some good outcome, it would have been an ethical action.

Some people have expanded this argument even further. Richard Kania argued that police officers should be allowed to freely accept gratuities because such actions would constitute the building blocks of positive social relationships between the police and the public.⁹ In this case, duty is used to justify what under normal circumstances would be considered unethical. Conversely, if officers take gratuities for self-gratification rather than to form positive community relationships, then the action would be considered unethical by many.

Types of Ethics

Ethics usually involves standards of fair and honest conduct—what we call conscience, the ability to recognize right from wrong—and actions that are good and proper. There are absolute ethics and relative ethics. **Absolute ethics** has only two sides—something is either good or bad, black or white. Some examples in police ethics would be unethical behaviors such as bribery, extortion, excessive force, and perjury, which nearly everyone would agree are unacceptable behaviors by the police.

Relative ethics is more complicated and can have a multitude of sides with varying shades of gray. What one person considers to be ethical behavior may be deemed highly unethical by someone else. Not all ethical issues are clear-cut, however, and communities *do* seem willing at times to tolerate extralegal behavior if there is a greater public good, especially in dealing with problems such as members of gangs and people experiencing homelessness. This willingness on the part of the community can be conveyed to the police. Ethical relativism can be said to form an essential part of the community policing movement.

A community’s acceptance of relative ethics as part of criminal justice may send the wrong message: that few boundaries are placed on justice system employee behaviors and, at times, “anything goes” in their fight against crime. As John Kleinig pointed out, giving false testimony to ensure a public menace is “put away” or illegally wiretapping an organized crime figure’s telephone might sometimes be viewed as “necessary” and “justified,” though illegal.¹⁰

This is the essence of the crime control model of criminal justice. Another example is that many police believe they are compelled to skirt along the edges of the law—or even violate it—in order to arrest drug traffickers. The ethical problem here is that even if the action could be justified as morally proper, it remains illegal. For many persons, however, the protection of society overrides other concerns.

This viewpoint—the “principle of double effect”—holds that when one commits an act to achieve a good end and an inevitable but intended effect is negative, then the act might be justified. A long-standing debate has occurred about balancing the rights of individuals against the community’s interest in calm and order.

These special areas of ethics can become problematic and controversial when police officers use deadly force or lie and deceive others in their work. Police could justify a whole range of activities that others may deem unethical simply because the consequences resulted in the greatest good for the greatest number—the *utilitarian* approach (or **utilitarianism**). If the ends justified the means, perjury would be ethical when committed to prevent a serial killer from being set free to prey on society. In our democratic society, however, the means are just as important as, if not more important than, the desired end.

As examples, the public in some jurisdictions may not object to the police “hassling” suspected members of a gang—pulling them over in their cars, say, and doing a field interview—or telling people



One of the ethical responsibilities of police officers is to testify truthfully in court concerning what they saw, heard, and did during the performance of their duties.

AP Photo/St. Petersburg Times, Cherie Diez, Pool

experiencing homelessness who are loitering in front of a heavy tourism area or public park to “move along.”

It is no less important today than in the past for criminal justice employees to appreciate and come to grips with ethical essentials. Indeed, ethical issues in policing have been affected by three critical factors:¹¹ (1) the growing level of temptation stemming from the illicit drug trade; (2) the potentially compromising nature of the organizational culture—a culture that can exalt loyalty over integrity, with a “code of silence” that protects unethical employees; and (3) the challenges posed by decentralization (flattening the organization and pushing officers’ decision-making downward) through the advent of community-oriented policing and problem-solving.

Noble Cause Corruption

When the police practice relative ethics and the principle of double effect, described earlier, it is known as **noble cause corruption**—what Thomas Martinelli, perhaps gratuitously, defined as “corruption committed in the name of good ends, corruption that happens when police officers care too much about their work.”¹² It basically holds that when an act is committed to achieve a good end (such as an illegal search) but its outcome is negative (the person who is searched eventually goes to prison), the act might still be justified.

Although noble cause corruption can occur anywhere in the criminal justice system, we might look at the police for examples. Officers might bend the rules, such as not reading a drunk person their rights or performing a field sobriety test; planting evidence; issuing “sewer” tickets—writing a person a ticket but not giving it to them, resulting in a warrant issued for failure to appear in court; “testilying” or “using the magic pencil,” whereby police officers write up an incident in a way that criminalizes a suspect—this is a powerful tool for punishment. Noble cause corruption carries with it a different way of thinking about the police relationship with the law. Here, officers operate on a standard that places personal morality above the law, becoming legislators *of* the law and acting as if they *are* the law.¹³ Some officers rationalize such activities; as a Philadelphia police officer put it, “When you’re shoveling society’s garbage, you gotta be indulged a little bit.”¹⁴ Obviously, the kinds of noble cause behaviors mentioned here often involve arrogance on the part of the police and ignore the basic constitutional guidelines the occupation demands. Administrators and middle managers must be careful to take a hardline view that their subordinates always tell the truth and follow the law. A supervisory philosophy of discipline based on due process, fairness, and equity, combined with intelligent, informed, and comprehensive decision-making, is best for the department, its employees, and the community.¹⁵

ETHICS IN POLICING

Having defined the types of ethics and some dilemmas, next we discuss in greater detail some of the ethical issues faced by police leaders and their subordinates.

A Primer: The Oral Job Interview

During oral interviews for a position in policing, applicants are often placed in a hypothetical situation that tests their ethical beliefs and character. For example, they may be asked to assume the role of Officer Brown, who is checking on foot an office supplies retail store that was found to have an unlocked door during early morning hours. On leaving the building, Brown observes another officer, Smith, removing a \$200 writing pen from a display case and placing it in his uniform pocket. What should Officer Brown do?

This kind of question commonly befuddles the applicant: “Should I rat on my fellow officer? Overlook the matter? Merely tell Smith never to do that again?” Unfortunately, applicants may do a lot of “how am I *supposed* to respond” soul-searching and second-guessing with these kinds of questions.

Bear in mind that criminal justice agencies do not wish to hire someone who possesses ethical shortcomings; it is simply too potentially dangerous and expensive, from both legal and moral standpoints, to take the chance of bringing into an agency someone who is corrupt. That is the reason for such thorough questioning and background investigation of applicants.

Before responding to a scenario like the one concerning Officers Brown and Smith, the applicant should consider the following issues: Is this likely to be the first time Smith has stolen something? Don't the police arrest and jail people for this same kind of behavior?

In short, police administrators should *never* want an applicant to respond that it is acceptable for an officer to steal. Furthermore, it would be incorrect for an applicant to believe that police do not want an officer to “rat out” another officer. Applicants should never acknowledge that stealing or other such activities are to be overlooked.

Police Corruption

“For as long as there have been police, there has been police corruption.”¹⁶ Thus observed police expert Lawrence Sherman about one of the oldest problems in U.S. policing. Indeed, the Knapp Commission investigated police corruption in the early 1970s, finding that there are two primary types of corrupt police officers: the “meat-eaters” and the “grass-eaters.” Meat-eaters spend a good deal of their working hours aggressively seeking out situations they can exploit for financial gain, including gambling, narcotics, and other lucrative enterprises.

Grass-eaters, the commission noted, constitute the overwhelming majority of those officers who accept payoffs; they are not aggressive but will accept gratuities from contractors, tow-truck operators, gamblers, and the like. Although such officers probably constitute a small percentage of the field, any such activity is to be identified and dealt with sternly.

Police corruption can be defined broadly, from major forms of police wrongdoing to the pettiest forms of improper behavior. Another definition is “the misuse of authority by a police officer in a manner designed to produce personal gain for the officer or for others.”¹⁷ Police corruption is not limited to monetary gain, however. Gains may be made through the acceptance of services received, status, influence, prestige, or future support for the officer or someone else.¹⁸

Going Global 4.1

Mexico—Where an Entire Police Force May Be Corrupt¹⁹

An entire municipal police force in central Mexico was terminated following suspicions of corruption and ties to organized crime. State and military personnel took control of security in Tehuacán, disarming 205 police officers on the force; another 113 officers, including the agency's director, were unaccounted for and were believed to have fled the city. The terminations followed increases in violent crimes, after which the officers underwent evaluations to determine if they were fit for duty and whether their weapons had been used to commit crimes. Authorities also determined a majority of the police did not receive adequate screening for being hired and should not have been working on the force.



Mexican police have long been known to engage in crime, graft, and corruption. Recently, relatives of 43 missing students demanded justice in Mexico City. Officials believe the students were abducted by corrupt police officers and handed over to a local drug gang.

©REUTERS/Henry Romero

The wholesale termination demonstrated the level to which organized crime and corruption have penetrated the local police, who are particularly vulnerable to such behavior as they are overworked, underpaid, and understaffed. The math is not complicated: If a police officer is paid the U.S. equivalent of \$200 per month and organized crime offers \$1,000 a month, there is little doubt they will choose the latter. There is evidence that organized crime groups even secure positions for their own people within the police force and that some police units operate kidnapping rings.

To Inform or Not to Inform: The Code of Silence

Let's continue with the earlier scenario. Remember that Officer Brown witnessed Officer Smith putting an expensive ink pen in his pocket after they found an unlocked office supplies retail business on the graveyard shift. If reported, the misconduct will ruin Smith, but if not reported, the behavior could eventually cause enormous harm. To outsiders, this is not a moral dilemma for Brown at all; the only proper path is to report the misconduct. However, arguments exist both for and against Brown's informing on their partner. Reasons for informing include the fact that the harm caused by a scandal would be outweighed by the public's knowing the police department is free of corruption; also, individual episodes of corruption would be brought to a halt. Brown, moreover, has a sworn duty to uphold the law. Reasons against informing include the facts that, at least in Brown's mind, the other officer is a member of the "family" and a skilled police officer is a valuable asset whose social value far outweighs the damage done by moderate corruption.

A person who is in charge of investigating police corruption would no doubt take a punitive view because police are not supposed to steal, and they arrest people for the same kinds of acts every day. Still, the issue—and a common question during an oral interview when members of the public are being tested for police positions—is whether or not Brown would come forth and inform on the fellow officer.

It is necessary to train police recruits on the need for a corruption-free department. The creation and maintenance of an internal affairs unit and the vigorous prosecution of lawbreaking police officers are also critical to maintaining the integrity of officers.

The Law Enforcement Code of Ethics and Oath of Honor

The Law Enforcement Code of Ethics (LECE) was adopted by the International Association of Chiefs of Police (IACP) in 1957 and has been revised several times since then. It is a powerful proclamation, and tens of thousands of police officers across the nation have sworn to uphold this code upon graduating from their academies. Unfortunately, the LECE is also quite lengthy, covering rather broadly the following topics as they relate to police officers: primary responsibilities, performance of one's duties, discretion, use of force, confidentiality, integrity, cooperation with other officers and agencies, personal/professional capabilities, and private life.

The IACP adopted a separate, shorter code that would be mutually supportive of the LECE but also easier for officers to remember and call to mind when they come face-to-face with an ethical dilemma. It is the Law Enforcement Oath of Honor, and the IACP is hoping the oath will be implemented in all police agencies and by all individual officers. It may be used at swearing-in ceremonies, graduation ceremonies, promotion ceremonies, beginnings of training sessions, police meetings and conferences, and so forth.²⁰ The Law Enforcement Oath of Honor is as follows:

On my honor, I will never
betray my badge, my integrity,
my character or the public trust.
I will always have the courage to hold
myself and others accountable for our actions.
I will always uphold
the constitution, my community and the
agency I serve.²¹

Accepted and Deviant Lying

In many cases, no clear line separates acceptable from unacceptable behavior in policing. The two are separated by an expansive gray area that comes under relative ethics. Some observers have referred to such illegal behavior as a “**slippery slope**,” meaning that people tread on solid or legal ground but at some point slip beyond the acceptable into illegal or unacceptable behavior.

Criminal justice employees lie or deceive for different purposes and under varying circumstances. In some cases, their misrepresentations are accepted as an essential part of a criminal investigation, whereas in other cases they are viewed as violations of law. David Carter examined police lying and perjury and found a distinction between accepted lying and deviant lying.²² **Accepted lying** includes police activities intended to apprehend or entrap suspects. This type of lying is generally considered to be trickery. **Deviant lying**, by contrast, refers to occasions when officers commit perjury to convict suspects or are deceptive about some activity that is illegal or unacceptable to the department or public in general.



Lying and deception have long been used by the police to identify and arrest criminals; this undercover DEA agent is posing as a student as part of a drug investigation.

AP Photo/Drug Enforcement Agency

Deception has long been practiced by the police to ensnare violators and suspects. For many years, it was the principal method used by detectives and police officers to secure confessions and convictions. Accepted lying is allowed by law, and to a great extent, it is expected by the public. Gary Marx identified three methods police use to trick a suspect: (1) performing the illegal action as part of a larger, socially acceptable, and legal goal; (2) disguising the illegal action so the suspect does not know it is illegal; and (3) morally weakening the suspect so the suspect voluntarily becomes involved.²³ The courts have long accepted deception as an investigative tool. For example, the U.S. Supreme Court ruled in *Illinois v. Perkins* that, when investigating crimes, police undercover agents are not required to administer the *Miranda* warning to incarcerated persons.²⁴ Lying, although acceptable by the courts and the public in certain circumstances, does result in an ethical dilemma. It is a dirty means to accomplishing a good end—the police using untruths to gain the truth relative to some event.

In their examination of lying, Thomas Barker and David Carter identified two types of deviant lying: lying that serves legitimate purposes and lying that conceals or promotes crimes or illegitimate ends.²⁵ Lying that serves legitimate goals occurs when officers lie to secure a conviction, obtain a search warrant, or conceal omissions during an investigation. Barker found police officers believe that almost one fourth of their agency would commit perjury to secure a conviction or to obtain a search warrant.²⁶ Lying becomes an effective, routine way to sidestep legal impediments. When left unchecked by supervisors, managers, and administrators, lying can become organizationally accepted as an effective means of nullifying legal entanglements and removing obstacles that stand in the way of convictions. Examples include using the services of nonexistent confidential informants to secure search

warrants, concealing that an interrogator went too far, coercing a confession, or perjuring oneself to gain a conviction.

Lying to conceal or promote criminality is the most distressing form of deception. Examples range from when the police lie to conceal their use of excessive force when arresting a suspect to obscuring the commission of a criminal act.

Case Study 4.1

Sample Agency Policy Governing Police Conduct

Following is a sample departmental policy pertaining to officers' conduct; read it and respond to the questions that follow.

- A. General Conduct: Obedience to Laws and Regulations**
 - a.** Officers shall obey the constitutional, civil, and criminal laws of the city, its state, and the federal government.
 - b.** Officers shall obey all lawful orders.
 - c.** Violations include, but are not limited to
 - Committing a willful violation of constitutional civil rights that demonstrates reckless disregard.
 - Committing infractions of policy concerning traffic codes (e.g., driving over the speed limit, parking in unauthorized locations, failing to wear seat belts).
 - Inflicting punishment or mistreatment (both physical and/or mental) upon a prisoner or person in custody or detention or a citizen.
 - Violating any local, state, or federal criminal or civil codes or ordinances.
 - Refusing or failing to protect a prisoner's civil rights.
 - Making slanderous or libelous statements intending to harm the reputation of another member of this agency or any person in general.
 - Using excessive force to hold, arrest, or detain any person, or using prohibited devices, procedures, tactics, or techniques to do so.
- B. Conduct Unbecoming an Officer**
 - a.** Honesty, efficiency, and integrity are the guideposts for a police officer's conduct. All officers are employed to serve the citizens of this jurisdiction, who are entitled to courteous, efficient response to requests for police services.
 - b.** All officers, whether on or off duty, shall be governed by ordinary and reasonable rules of good conduct and behavior and shall not commit any act which could adversely reflect on this department.
 - c.** Officers shall not reveal any information of which they have knowledge unless it is given to a person entitled to have the information.
 - d.** All officers when off duty, but in uniform, shall conduct themselves as though they were on duty.
 - e.** Members shall conduct themselves (on duty as well as off duty) in a manner that does not damage or might likely damage or bring the public image, integrity, or reputation of the Police Department into discredit, disrepute, or impair its efficient and effective operation.
 - 1.** Based on what you've read, is this policy adequate for governing all improper acts of commission or omission by the officers in this agency?
 - 2.** If not, which policy or policies might be added? Which of the above might be amended?

Accepting Gratuities

Many police officers commonly accept **gratuities** as a part of their job. Restaurants frequently give officers free or half-price meals and drinks, and other businesses routinely give officers discounts for services or merchandise. While some officers and their departments accept the receipt of such gratuities as a legitimate

part of their job, other agencies prohibit such gifts and discounts but seldom attempt to enforce any relevant policy or regulation. Finally, some departments attempt to ensure officers do not accept free or discounted services or merchandise and routinely enforce policies or regulations against such behavior.²⁷

There are two basic arguments *against* police acceptance of gratuities. First is the slippery slope argument, discussed earlier, which proposes that gratuities are the first step in police corruption. This argument holds that once gratuities are received, police officers' ethics are subverted and they are open to additional breaches of their integrity. In addition, officers who accept minor gifts or gratuities are then obligated to provide the donors with some special service or accommodation. Furthermore, some critics propose that receiving a gratuity is wrong because officers are receiving rewards for services they are obligated to provide as part of their employment—that is, officers have no legitimate right to accept compensation in the form of a gratuity. If the police ever hope to be accepted as members of a full-fledged profession, they must address whether the acceptance of gratuities is professional behavior.

Former New York police commissioner Patrick V. Murphy was one of those who believed that “except for your paycheck, there is no such thing as a clean buck.”²⁸ He also noted that judges, teachers, doctors, and other professionals do not accept special consideration from restaurants, convenience stores, movie theaters, and so on.

Here is an example of a policy developed by a sheriff's office concerning gratuities:

1. Without the express permission of the Sheriff, members shall not solicit or accept any gift, gratuity, loan, present, or fee where there is any direct or indirect connection between this solicitation or acceptance of such gift and their employment by this office.
2. Members shall not accept, either directly or indirectly, any gift, gratuity, loan, fee, or thing of value, the acceptance of which might tend to improperly influence their actions, or that of any other member, in any matter of police business, or which might tend to cast an adverse reflection on the Sheriff's Office.
3. Any unauthorized gift, gratuity, loan, fee, reward, or other thing falling into any of these categories coming into the possession of any member shall be forwarded to the member's commander, together with a written report explaining the circumstances connected therewith. The commander will decide the disposition of the gift.²⁹

YOU BE THE . . . POLICE OFFICER

One of the authors was involved in the following case study:

Assume you are a police officer in a small university town. One night while at home, you receive a call from a fellow officer saying he just finished taking a hit-and-run report. It appears that your sister has recently been stalked and pestered by an older man (who is something of a degenerate). Tonight, it seems she and some of her friends decided to get some revenge for his actions and pay a visit to the man's home. Upon arriving in a pickup truck, they purposely rammed into his car as it was parked in the street and then drove away, causing fairly substantial damage. The officer wants to know how you want him to handle the situation. How will you tell the officer to proceed?

Greed and Temptation

Edward Tully underscored the vast amount of temptation that confronts today's police officers and what police leaders must do to combat it:

Socrates, Mother Teresa, or other revered individuals in our society never had to face the constant stream of ethical problems of a busy cop on the beat. One of the roles of [police leaders] is to create an environment that will help the officer resist the temptations that may lead

to misconduct, corruption, or abuse of power. The executive cannot construct a work environment that will completely insulate the officers from the forces which lead to misconduct. The ultimate responsibility for an officer's ethical and moral welfare rests squarely with the officer.³⁰

Most of the public have no way of comprehending the amount of temptation that confronts today's police officers. They frequently find themselves alone inside retail businesses after normal business hours, clearing the building after finding an open door or window. A swing or graveyard shift officer could easily obtain considerable plunder during these occasions, acquiring everything from clothing to tires for a personal vehicle. At the other end of the spectrum is the potential for huge payoffs from drug traffickers or other big-money offenders who will gladly pay the officer to look away from their crimes. Some officers, like the general public, find this temptation impossible to overcome.

“Random Acts of Kindness”: The Unseen Side of Police Work

This chapter section has focused on efforts to evaluate, constrain, and discipline different forms of police behavior. Perhaps it is appropriate, therefore—especially in the post–George Floyd era when there is so much negativity toward the police—to attempt to balance the issue by pointing out another, often overlooked side of the issue: police behaviors that are laudable and reveal a completely different face from that which the public perceives.

Each day, police officers perform countless “random acts of kindness” that seldom come to the public's attention. Indeed, on many occasions each day officers do act in unique and unexpected ways in order to help someone in distress, such as passing the hat (literally) to collect funds to buy food for a group of hungry undocumented individuals while they are being detained; giving an individual suffering from hard-core alcoholism enough whiskey (from a bottle of bourbon confiscated long before) that they might sleep in their cell, keeping the hallucinations of the delirium tremens (DTs) at bay; lying on their bellies during a downpour to retrieve cash from a storm sewer so an older adult couple (who, shortly before, had been bound, gagged, beaten, and robbed) might have at least some of their money returned (while fleeing their home, the robber had dropped a considerable number of bills in the yard and gutter); or giving a woman money to feed herself and her baby while her husband is in the local jail.

The following deeds, however, *were* reported by the media:

- An officer caught a struggling single mother shoplifting food from a grocery store for her family. Rather than take her to jail, the officer purchased the food for the mother and showed her the local food banks and churches where she could get assistance until she got back on her feet.³¹
- Officers in New York City and Palatka, Florida, noticing that men experiencing homelessness were virtually walking barefoot, purchased new shoes for them.³²
- After a 20-year-old wheelchair-bound man was robbed of \$4,000 he was saving for a new wheelchair, officers not only caught the robber and returned his money but also created a fund so he could purchase the very best of wheelchairs (his other one at times got stuck in the snow).³³
- Officers in Benicia, California, and Phoenix, Arizona, learning that teens were walking long distances each day (one going 9 miles to and from work, the other, 2 miles to school), purchased bicycles for them and arranged for them to obtain helmets and other necessities.³⁴
- When a Nicoma, Oklahoma, police officer learned a bike had been stolen at knifepoint from a boy on his beat who had autism, he collected money from his department and his second job to buy the boy a new bike.³⁵

PRACTITIONER'S PERSPECTIVE

POLICE INTERNAL AFFAIRS INVESTIGATOR

Name: Zack Thew

Position: Deputy Chief of Police, Internal Affairs Investigator

Location: Reno, Nevada

What is your career story? I got a bachelor's degree in criminal justice. Shortly after that, I was employed by the Reno Police Department. I had the opportunity to work various assignments as an officer. I was a training officer, a lead negotiator, and a part of our mentoring program. After several years of doing that, I went into the detective division, where I worked in the fraud unit, the sex crimes unit, the robbery homicide unit, and the computer crimes unit before being promoted to sergeant.



What misconceptions do you often hear about this position? A misconception for internal affairs is that investigators are on a witch hunt or that they're trying to discipline employees for the sake of discipline. Certainly, accountability is at the heart of what we do, but good internal affairs investigators are conscious of employees' rights. They work very closely with employees and the association, and they work to protect the rights of those employees and ensure all the investigations are fact-based and fair and that the conclusions are reasonable.

Another misconception held by some members of the public is that the unit exists to cover up or protect substandard or criminal activity by the officers. And that's simply not true. I think how you address both of those misconceptions is to be as transparent, fair, and consistent as possible.

What role does diversity play in this position? Diversity plays a major role in internal affairs. Unfortunately, police often find themselves in situations that are grayer more than they are black-and-white. To be able to adapt to those situations and hold ourselves accountable under those circumstances, we need to understand the situation from as many perspectives as possible. We do that with a diverse approach. We look at it from the perspective of the involved citizens, the officers, the supervisors, the administrators, the media, the politicians, the community, and understand those perspectives so we can have an idea of the big picture with the course of action we ultimately take.

Do you see any common trends in this position? The current trend in internal affairs is a push for transparency. The public at large is very inquisitive, and the media and politicians are discerning. They want to know what's happening with their police department and how their organization is serving them. The fact of the matter is, we do not have as big of a segment of the population that blindly trusts the police as they existed before. So again, it's fostering that relationship, holding our people accountable, and being transparent.

What advice would you give to someone either wishing to study, or now studying, criminal justice and wanting to become a practitioner in this position? My advice for students who want to pursue this career is to spend some time in internal affairs to understand the demands of the job. Be as varied as you possibly can be in your work and personal experience, and understand current events, both inside and outside of your organization. That's going to help you know what you need to do to make your organization successful and what the expectations are from the public. Set high standards and hold yourself accountable above all else.

Case Study 4.2

A Hippocratic Oath for Police?

The President's Task Force on 21st Century Policing heard from 140 witnesses who described many different ways of creating a positive culture of policing. One such witness, distinguished police researcher David Kennedy of the John Jay College of Criminal Justice in New York, suggested there should be a Hippocratic Oath for policing. The Oath, existing as early as 275 C.E. and historically taken by physicians, directs the physician to "prescribe only beneficial treatments, according to his abilities and judgment, to refrain from causing harm or hurt, and to live an exemplary personal and professional life." As society's "doctors" (both often seeing people at their worst, when they are most in need of assistance), Kennedy argued that law enforcement officers' goal should be likewise—to avoid use of force if at all possible, even when it is allowed by law and by policy. Certainly, the dual concepts of community policing and problem-solving, as well as constitutional policing and legitimacy, appear to speak to this culture of policing. According to Kennedy, "Respectful language; thoughtful and intentional dialogue about the perception and reality of profiling and the mass incarceration of under-represented populations; and consistent involvement, both formal and informal, in community events all help ensure that relationships of trust between police and community will be built. The vision of policing in the 21st century should be that of officers as guardians of human and constitutional rights."

1. Should such an oath exist for policing?
2. If so, should it be implemented nationally or on an agency-by-agency basis as part of the individual department's policies and procedures?
3. Which federal official or agency might create and oversee its practical application?
4. Would such an oath be enforceable? If so, which agency would enforce it, and what penalties might exist for violations?

ETHICS IN THE COURTS

Although the public tends to think of criminal justice ethics primarily in terms of the police, certainly other criminal justice professionals (including the court work group) have expectations in this regard as well. The ethical standards and expectations—and some examples of failings—of those individuals are discussed next.

Evolving Standards of Conduct

The first call during the 20th century for formalized standards of conduct in the legal profession came in 1906, with Roscoe Pound's speech *The Causes of Popular Dissatisfaction With the Administration of Justice*.³⁶ However, the first canons of judicial ethics probably grew out of a professional baseball scandal in 1919, in which the World Series was "thrown" to the Chicago White Sox by the Cincinnati Reds. Baseball officials turned to the judiciary for leadership and hired U.S. District Court Judge Kenesaw Mountain Landis as baseball commissioner—a position for which Landis was paid \$42,500, compared to his \$7,500 earnings per year as a judge. This affair prompted the 1921 American Bar Association (ABA) convention to pass a resolution of censure against the judge and appoint a committee to propose standards of judicial ethics.³⁷

In 1924, the ABA approved the Canons of Judicial Ethics under the leadership of Chief Justice William Howard Taft, and in 1972, the ABA approved a new **Model Code of Judicial Conduct**; in 1990, the same body adopted a revised model code. Nearly all states and the District of Columbia have promulgated standards based on the code. In 1974, the United States Judicial Conference adopted a Code of Conduct for United States Judges, and Congress over the years enacted legislation regulating judicial conduct, including the Ethics Reform Act of 1989.

The Judge

Judges are discussed generally in a later chapter; however, here the focus is on their ethical responsibilities. Ideally, our judges are flawless, not allowing emotion or personal biases to creep into their work,

treating all cases and individual litigants with an even hand, and employing “justice tempered with mercy.” The perfect judge has been described as follows:

The good judge takes equal pains with every case no matter how humble; he knows that important cases and unimportant cases do not exist, for injustice is not one of those poisons which . . . when taken in small doses may produce a salutary effect. Injustice is a dangerous poison even in doses of homeopathic proportions.³⁸

Not all judges, of course, can attain this lofty status and find themselves succumbing to temptation and human faults and foibles. Judges can become embroiled in improper conduct or overstep their bounds in many ways: abuse of judicial power (against attorneys or litigants); inappropriate sanctions and dispositions (including showing favoritism or bias); not meeting the standards of impartiality and competence (discourteous behavior, gender bias and harassment, incompetence); conflict of interest (bias; conflicting financial interests or business, social, or family relationships); and personal conduct (criminal or sexual misconduct, prejudice, statements of opinion).³⁹

Following are a few examples of some ethical lapses by judges:⁴⁰

- An Arkansas judge is removed from the bench for providing information about a confidential adoption and making comments that were deemed sexist, racist, perverse, and homophobic.
- A Florida judge was caught on camera challenging a public defender to a fight (in which they later engaged) and adding that if he had a rock, he’d throw it at him.
- A Pennsylvania justice was indicted for using her court staff in her campaign for office as well as the campaign of her sister, who was running for the state senate.
- A Michigan judge was removed from the bench for conducting an affair with a woman who was a party in a child support case over which he was presiding.

Such incidents certainly do little to bolster public confidence in the justice system. People expect more from judges, who are “the most highly visible symbol of justice.”⁴¹

Unfortunately, codes of ethical conduct have not eradicated these problems or allayed concerns about judges’ behavior. Indeed, one judge who teaches judicial ethics at the National Judicial College in Reno, Nevada, stated most judges attending the college admit never having read the Model Code of Judicial Conduct before seeking judicial office.⁴²

Worse, according to Reuters, thousands of local and state judges across the nation have been allowed to keep their positions—even after making racist statements, lying to state officials, and forcing defendants to languish in jail without a lawyer, among other violation of laws and ethics.⁴³

The key to judicial ethics is to identify the troublesome issues and to create an “ethical alarm system” that responds.⁴⁴ Perhaps the most important tenet in the code and the one that is most difficult to apply is that judges should avoid the *appearance* of impropriety—in other words, it is not enough that judges *do* what is just; they must also avoid conduct that would create in the public’s mind a perception that their ability to carry out responsibilities with integrity, impartiality, and competence is impaired.

Ethical requirements for the federal judiciary and other federal employees are discussed later in this chapter.

Prosecutors

Given their power and authority to decide which cases are to be prosecuted, prosecuting attorneys must closely guard their ethical behavior. It was decided in 1935 (in *Berger v. United States*) that the primary duty of a prosecutor is “not that he shall win a case, but that justice shall be done.”⁴⁵

Instances of prosecutorial misconduct were reported as early as 1897⁴⁶ and are still reported today. One of the leading examples of unethical conduct by a prosecutor is *Miller v. Pate* (1967), in which the prosecutor concealed from the jury in a murder trial the fact that a pair of undershorts with red stains contained not blood but red paint.⁴⁷

According to Elliot Cohen, misconduct works: Oral advocacy is important in the courtroom and can have a powerful effect. Another significant reason for such conduct is the harmless error doctrine, in which an appellate court can affirm a conviction despite the presence of serious misconduct during the trial. Only when appellate courts take a stricter, more consistent approach to this problem will it end.⁴⁸

YOU BE THE . . . ETHICS COMMITTEE MEMBER

A U.S. district court judge in Alabama was controversial even before he was arrested on allegations of beating his wife. He was criticized for hearing government cases while his aviation company was getting hundreds of thousands of dollars in government business. He was also infamous for having an extramarital affair with his courtroom assistant, as well as for his messy public divorce.

Judge Mark Fuller resigned because of a fight he had with the same former courtroom assistant—now his wife—who was heard yelling, “He’s beating on me! Please help me!” to a police dispatcher.

A five-judge review panel investigated Fuller’s behavior, and a U.S. House of Representatives committee considered conducting impeachment hearings against him.

However, because of his lifetime appointment to the bench, the judge could not be forced off the bench; he could only be reprimanded and asked to resign, and the congressional committee could have recommended impeachment.

1. Should judges with lifetime appointments receive such protections while sitting on the bench?
2. If not, what kind of appointment system would you propose?⁴⁹

Defense Attorneys

Defense attorneys, too, must be legally and morally bound to ethical principles as agents of the courts. Cohen suggested the following moral principles for defense attorneys:⁵⁰

- Treat others as ends in themselves and not as mere means to winning cases.
- Treat clients and other professional relations in a similar fashion.
- Do not deliberately engage in behavior apt to deceive the court as to truth.
- Be willing, if necessary, to make reasonable personal sacrifices of time, money, and popularity for what you believe to be a morally good cause.
- Do not give money to, or accept money from, clients for wrongful purposes or in wrongful amounts.
- Avoid harming others in the course of representing your client.
- Be loyal to your client and do not betray their confidence.

Other Court Employees

Other court employees have ethical responsibilities as well. For example, an appellate court judge’s secretary is asked by a good friend who is a lawyer whether the judge will be writing the opinion in a certain case. The lawyer may be wishing to attempt to influence the judge through his secretary, renegotiate with an opposing party, or engage in some other improper activity designed to alter the case outcome.⁵¹ Bailiffs, court administrators, court reporters, courtroom clerks, and law clerks all fit into this category. It would be improper, say, for a bailiff who is accompanying jurors back from a break in a criminal trial to mention the judge “sure seems annoyed at the defense attorney” or for a law clerk to tell an attorney friend that the judge she works for prefers reading short bench memos.⁵²

ETHICAL CONDUCT OF FEDERAL EMPLOYEES

The laws governing the ethical conduct of federal employees are contained in a variety of statutes, the two major sources of which are Title 18 of the U.S. Code and the Ethics in Government Act of 1978 (enacted following the Watergate scandal of the early 1970s to promote public confidence in government). The latter act has been amended a number of times, with its most significant revision occurring in the Ethics Reform Act of 1989 (Public Law 101-194). A brief general description of that law, as well as expectations of the federal judiciary, is provided next.

The Ethics Reform Act and the Whistleblower Protection Act

The Ethics Reform Act addresses a number of areas of ethical concern, including the receipt of gifts, financial conflicts involving employees' positions, personal conflicts that may affect their impartiality, misuse of position (for private gain), and outside activities or employment that conflicts with their federal duties (such as serving as an expert witness or receiving payment for speaking, writing, and teaching).

In 1989, the **Whistleblower Protection Act** (Public Law 101-12) strengthened the protections provided in the Ethics Reform Act. These whistleblower protection laws prohibit reprisal against federal employees who reasonably believe their disclosures show "a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a specific and substantial danger to public health and safety."

The Federal Judiciary

The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973. This code applies to U.S. circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Following are the code's canons of ethical behavior:⁵³

Canon 1: A judge should uphold the integrity and independence of the judiciary.

Canon 2: A judge should avoid impropriety and the appearance of impropriety in all activities.

Canon 3: A judge should perform the duties of the office impartially and diligently.

Canon 4: A judge may engage in extrajudicial activities that are consistent with the obligations of judicial office.

Canon 5: A judge should refrain from political activity.

Implicit in these canons are restrictions on judges soliciting or accepting gifts, outside employment, and payment for appearances, speeches, or written articles.

Federal judges have the authority to resolve significant public and private disputes. Occasionally, however, a matter assigned to them may involve them or their families personally or affect individuals or organizations with which they have associations outside of their official duties. In these situations, if their impartiality might be compromised, they must disqualify (or recuse) themselves from the proceeding.

Disqualification is required under Canon 3C(1) of the ABA's Code of Conduct for United States Judges, if the judge

- Has personal knowledge of disputed facts.
- Was employed in a law firm that handled the same matter while they were there.
- Has a close relative who is a party or an attorney.
- Personally owns, or has an immediate family member who owns, a financial interest in a party.
- As a government official, served as a counsel in the case.

ETHICS IN CORRECTIONS

Most correctional officers—like police officers and judges—who work in jails and prisons are dedicated, honest, and law-abiding in nature. Occasionally, however, correctional officers are found to have engaged in inappropriate behaviors. Those behaviors can involve a wide range of activities, such as inappropriate relationships with persons who are incarcerated, bringing in contraband (such as drugs or tobacco), and physical or sexual abuse (generally involving male officers and women who are incarcerated).⁵⁴

The strength of the corrections subculture can also contribute to ethical problems in correctional facilities; it correlates with the security level of a correctional facility and is strongest in maximum-security institutions. Powerful forces within the correctional system have a stronger influence over the behavior of correctional officers than do the administrators of the institution, legislative decrees, or agency policies.⁵⁵ Indeed, it has been known for several decades that the exposure to external danger in the workplace creates a remarkable increase in group solidarity.⁵⁶

Some of the job-related stressors for correctional officers are similar to those the police face: the ever-present potential for physical danger, hostility directed at officers by persons who are incarcerated and even by the public, unreasonable role demands, a tedious and unrewarding work environment, and dependence on one another to effectively and safely work in their environment.⁵⁷ For these reasons, some norms of corrections work that can develop and have been identified include the following:

Always go to the aid of an officer in distress.

Do not “rat.”

Never make another officer look bad in front of people who are incarcerated.

Always support an officer in a dispute with a person who is incarcerated.

Always support officer sanctions against persons who are incarcerated.

Do not wear a “white hat” (participate in behavior that suggests sympathy or identification with persons who are incarcerated).⁵⁸

Security issues and the way in which individual correctional officers have to rely on each other for their safety make loyalty to one another a key norm.

YOU BE THE . . . CORRECTIONAL OFFICER

Correctional Officer Ben Jones has worked for 1 year in a medium-security housing unit in a state prison and has gotten on friendly terms with Stevens, who is incarcerated. Known to have been violent, manipulative, and associating with a similarly rough crowd while on the outside, now Stevens appears to be a model for good behavior; in fact, Officer Jones relies heavily on Stevens to keep him informed of the goings-on in the unit, as well as to maintain its overall cleanliness and general appearance. Over time, the two address each other on a first-name basis and increasingly discuss personal matters; Jones occasionally allows Stevens to get by with minor infractions of prison rules (e.g., being in an unauthorized area or entering another individual’s cell). Today, Stevens mentions he is having problems with his fiancée—specifically, that he has received a “Dear John” letter from her, stating she is dating other men and is “moving on.” Upon arriving home from work that evening, Jones finds a case of wine on his porch. No card was left with the case of wine, but at work the next morning, Stevens winks at Jones and asks if he “ventured into the vineyard last night.”

1. Should Officer Jones report the incident?
2. Has Jones’s behavior thus far violated any standards of ethics for correctional officers? If so, what form of punishment (if any) would be appropriate?
3. What should be the relationship between Jones and Stevens in the future?
4. What could Jones have done differently, if anything?

The American Correctional Association (ACA) developed a code of ethics for correctional officers in 1978 that advocates for “unfailing honesty, respect for the dignity and individuality of human beings and a commitment to professional and compassionate service.”⁵⁹



Like police officers, correctional officers in jails and prisons at times must exercise force—which raises ethical considerations and concerns for them as well.

Boston Globe/Getty Images

ETHICS TESTS FOR THE CRIMINAL JUSTICE STUDENT

The following are some tests to help guide you, the criminal justice student, to decide what is and is not ethical behavior:⁶⁰

- *Test of common sense:* Does the act make sense, or would someone look askance at it?
- *Test of publicity:* Would you be willing to see what you did highlighted on the front page of the local newspaper?
- *Test of one's best self:* Will the act fit the concept of oneself at one's best?
- *Test of one's most admired personality:* What would one's parents or minister do in this situation?
- *Test of hurting someone else:* Will it cause pain for someone?
- *Test of foresight:* What is the long-term likely result?

Other questions that a criminal justice practitioner might ask are “Is it worth my job and career?” and “Is my decision legal?”

Another tool is that of “the bell, the book, and the candle.” Ask yourself these questions: Do bells or warning buzzers go off as I consider my choice of actions? Does it violate any laws or codes in the statute or ordinance books? Will my decision withstand the light of day or spotlight of publicity (the candle)?⁶¹

In sum, all we can do is seek to make the best decisions we can and be a good person and a good justice system employee, one who is consistent and fair. We need to apply the law, the policy, the guidelines, or whatever it is we dispense in our occupation without bias or fear and to the best of our ability, being mindful along the way that others around us may have lost their moral compass and attempt to drag us down with them. To paraphrase Franklin Delano Roosevelt, “Be the best you can, wherever you are, with what you have.”

In closing, it might be good to mention that ethics is important to all criminal justice students and practitioners, not only because of the moral/ethical issues and dilemmas they confront each day but also because they have a lot of discretion with the people with whom they are involved—such as the discretion to arrest or not arrest, to charge or not charge, to punish or not punish, and even to shoot or not shoot.



“The bell, the book, and the candle” test can be used as a guide against making unethical decisions.

©iStockphoto.com/terrymorris, ©iStockphoto.com/DNY59,
©iStockphoto.com/malerapaso

IN A NUTSHELL

- Ethics involves doing what is right or correct in a professional capacity. Deontological ethics considers one's duty to act. Immanuel Kant expanded the ethics of duty by including the idea of "good will." People's actions must be guided by good intent.
- There are two types of ethics: absolute and relative. Absolute ethics has only two sides—something is either good or bad. Relative ethics is more complicated and can have varying shades of gray. What is considered ethical behavior by one person may be deemed highly unethical by someone else.
- The "principle of double effect"—also known as noble cause—refers to the commission of an unethical act in order to achieve a good outcome.
- The Knapp Commission identified two types of corrupt police officers: the "meat-eaters" and the "grass-eaters." The branch of the department and the type of assignment affect opportunities for corruption. Officers' code of silence can interfere with the efforts of police leadership to uncover police corruption.
- The Law Enforcement Code of Ethics (LECE) was adopted in 1957; more recently, a separate, shorter code was adopted, which is easier for officers to remember when they come face-to-face with an ethical dilemma; it is the Law Enforcement Oath of Honor.
- Accepted lying includes police activities intended to apprehend or entrap suspects. This type of lying is generally considered to be trickery. Deviant lying occurs when officers commit perjury to convict suspects or are deceptive about some activity that is illegal or unacceptable.
- There are two basic arguments *against* police acceptance of gratuities. First is the slippery slope argument, which proposes that gratuities are the first step in police corruption. In addition, when officers accept minor gifts or gratuities, they may then be obligated to provide the donors with some special service or accommodation.
- The first call for formalized standards of conduct in the legal profession came in 1906, with Roscoe Pound's speech *The Causes of Popular Dissatisfaction With the Administration of Justice*. In 1924, the ABA approved the Canons of Judicial Ethics, and in 1972, the ABA approved a new Model Code of Judicial Conduct; in 1990, the same body adopted a revised model code. Nearly all states and the District of Columbia have established standards based on the code.
- In 1974, the United States Judicial Conference adopted a Code of Conduct for federal judges, and Congress over the years has enacted legislation regulating judicial conduct.
- Judges can engage in several types of abuses of judicial power, such as showing favoritism or bias, not being impartial, engaging in conflicts of interest, and being unethical in their personal conduct.
- Prosecutors and defense attorneys, too, must be legally and morally bound to ethical principles as agents of the courts.
- Federal employees are governed by the Ethics Reform Act of 1989, which addresses the receipt of gifts, financial and personal conflicts, and outside activities or employment that conflicts with their federal duties.
- Corrections personnel confront many of the same ethical dilemmas as police personnel.
- The strength of the corrections subculture correlates with the security level of a correctional facility and is strongest in maximum-security institutions.
- Some simple ethical tests can guide criminal justice students and practitioners in working through ethical quandaries.

KEY TERMS

Absolute ethics (p. 79)	Noble cause corruption (p. 80)
Accepted lying (p. 83)	Police corruption (p. 81)
Deontological ethics (p. 78)	Relative ethics (p. 79)
Deviant lying (p. 83)	Slippery slope (p. 83)
Gratuities (p. 84)	Utilitarianism (p. 79)
Model Code of Judicial Conduct (p. 88)	Whistleblower Protection Act (p. 91)

REVIEW QUESTIONS

1. How would you define *ethics*?
2. What are examples of relative and absolute ethics?
3. What specific examples of legitimate ethical dilemmas arise with police, courts, and corrections practitioners in the course of their work?
4. How would you describe the codes and canons of ethics that exist in police departments, courts, and corrections agencies? What elements do they have in common?
5. How does the principle of double effect pose problems for criminal justice and society?
6. Why was the Law Enforcement Oath of Honor developed, and how does it differ from the Code of Ethics?
7. What constitutes police corruption? What are its types, and what are the most difficult ethical dilemmas presented in this chapter? Consider the issues presented in each dilemma.
8. Do you believe criminal justice employees should be allowed to accept minor gratuities? Explain your response as well as pros and cons for doing so.
9. In what ways can judges, defense attorneys, and prosecutors engage in unethical behaviors?
10. What forms of behavior by correctional officers in prisons or jails may be unethical?
11. What are some of the ethics “tests” for criminal justice students?

LEARN BY DOING

Following are several brief case studies (*based on actual occurrences*) involving criminal justice employees. Having read this chapter’s materials, determine for each case the ethical dilemmas involved and what you believe is the appropriate outcome.

1. You are sitting next to a police officer in a restaurant. When the officer attempts to pay for the meal, the waiter says, “Your money is no good here. An officer just visited my son’s school and made quite an impression. Plus, I feel safer having cops around.” The officer again offers to pay, but the waiter refuses to accept payment. The police department has a policy prohibiting the acceptance of free meals or gifts.
2. A judge often makes inappropriate sidebar comments and uses sexist remarks or jokes in court. For example, a woman was assaulted by her husband who beat her with a telephone; from the bench, the judge said, “What’s wrong with that? You’ve got to keep her in line once in a while.” He begins to address female lawyers in a demeaning manner, using such terms as “sweetie,” “little lady lawyer,” and “pretty eyes.”⁶²

3. (a) An associate warden and “rising star” in the local prison system has just been stopped and arrested for driving while intoxicated in his personal vehicle and while off duty. There are no damages or injuries involved, he is very remorseful, and he has just been released from jail. His wife calls you, the warden, pleading for you to allow him to keep his job. (b) One week later, this same associate warden stops at a local convenience store after work; as he leaves the store, a clerk stops him and summons the police—the individual has just been caught shoplifting a package of cigarettes. You have just been informed of this latest arrest.

THE POLICE

PART



Chapter 5	Police Organization: Structure and Functions	99
Chapter 6	Police at Work: Patrolling and Investigating	125
Chapter 7	Policing Methods and Challenges: Issues of Force, Liability, and Technologies	151
Chapter 8	Expounding the Constitution: Laws of Arrest, Search, and Seizure	169

This part consists of four chapters. **Chapter 5** discusses the organization and operation of selected federal law enforcement agencies, as well as the roles and operations of state and local (municipal police and county sheriff) agencies. Included are discussions of the English and colonial roots of policing, the three eras of policing after arrival in the United States, and brief considerations of INTERPOL and private police (security).

Chapter 6 focuses on the roles and tasks of policing, particularly with respect to the broad areas of training, patrolling, and investigating. Beginning with police recruitment, training (including higher education), roles and styles, basic tasks, and occupational stressors, we then consider patrol functions, use of discretion, community policing, and the work of criminal investigators (including crime scenes, use of informants, and cold cases).

Chapter 7 broadly examines several policing issues, especially several key questions that have arisen in the aftermath of police shootings (particularly that of George Floyd) concerning the need for police reform and changes in training, laws, qualified immunity, and the use of force. Included is a discussion of civil liability.

Chapter 8 examines the constitutional rights of the accused as well as limitations placed on the police under the Fourth, Fifth, and Sixth Amendments; the focus is on arrest, search and seizure, the right to remain silent, and the right to counsel.



©iStockphoto.com/ChiccoDodiFC



POLICE ORGANIZATION

Structure and Functions

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 5.1** State the origins of policing in England, to include the four major police-related offices that evolved and came to America.
- 5.2** Discuss the three eras of policing and August Vollmer's major contributions to its early development.
- 5.3** Explain the duties and functions of selected federal law enforcement agencies and the departments into which they are organized.
- 5.4** Delineate the various types of specialized functions found in state law enforcement agencies.
- 5.5** Distinguish between the functions and demographics of municipal and county police agencies.
- 5.6** Describe the basic qualifications and attributes for one to obtain a career in a law enforcement agency.
- 5.7** Explain how and why private policing was developed and the field's contemporary purposes and issues.

ASSESS YOUR AWARENESS

Test your knowledge of police structure and functions by responding to the following nine true–false items; check your answers after reading this chapter's materials.

- 1.** The four primary criminal justice officials of early England—sheriff, constable, coroner, and justice of the peace—remain in existence today.
- 2.** The “architect” and “crib” of policing—the person and agency where most initial practices were developed—were J. Edgar Hoover in the Philadelphia Police Department.
- 3.** The creation of the Department of Homeland Security in 2002 (and the concurrent reorganization of several major federal law enforcement departments and agencies) was the most significant transformation of the U.S. government in over a half century.
- 4.** Full-time professional policing, as it is generally known today, began in the early 1900s in New York City.
- 5.** The patrol function may be said to represent the backbone of policing.
- 6.** State law enforcement agencies typically perform only one function: patrolling state highways.
- 7.** INTERPOL is the oldest, best-known, and probably only truly international crime-fighting organization.
- 8.** Private police (security officers) greatly outnumber the public police, and while some of their duties are similar, the overall powers of private police are entirely different.

Answers can be found on page 401.

Many people and organizations had their eyes fixed on Minneapolis, Minnesota, in the runup to its midterm election of November 2, 2021; in this election, citizens were to vote on whether to “defund” their police department. Indeed, since the killing in Minneapolis of George Floyd at the hands of Officer Derek Chauvin in May 2020, dozens of cities had taken steps to reduce police funding or redirect police funds to other services. But Minneapolis's first-of-a-kind measure

was to amend the city charter and limit the size, scope, and influence of its police department, creating a Department of Public Safety in its place that would effectively eliminate the charter's required minimum number of officers (to become known as "peace officers") per capita and replace some officers with social workers, mental health experts, and crisis managers—and, significantly, give oversight of the agency to the city council and mayor.¹ The proposal was soundly defeated at the polls.

But it seemed from the outset the term "defund" was deeply polarizing and had different meanings for people, ranging from complete abolition of the city's police force for some to restricting money spent for military-style equipment for others; for still other people, it stood for ridding the city of an outdated model of policing and replacing it with one where experts respond to emergencies that might not require sworn officers, while at the same time diverting police funds to social services areas (such as homelessness and mental health) and possibly into more police training in de-escalation and accountability.² However it was viewed, by the end of 2021 politicians on both sides of the aisle had pretty well come to agree with voters in Minneapolis that restructuring and defunding police was not a good idea.³

Bear in mind that in the past, whenever the police were for some reason effectively taken off the job, society often quickly descended into chaos (such as when New York City suffered a widespread blackout with countless acts of looting, fires, and vandalism).⁴

Given this information, as you read this chapter consider whether all, none, or part of this nation's policing system should or could ever be defunded (abolished), and if so, what sort of model should stand in place of that which has largely been in effect (particularly at the local level) since the mid-1800s.

INTRODUCTION

How did the police come into being? How are they "designed" and organized to accomplish their mission? These are legitimate questions.

This chapter's primary aims are (1) to look at the early development of policing and (2) to inform the reader about the role and functions of contemporary federal, state, and local agencies, as well as the private police.

The chapter begins with a brief history of the evolution of four primary criminal justice officers—sheriff, constable, coroner, and justice of the peace—from their roots in early England to their coming to America. The following is an overview of the three eras of policing in the United States and the events and shortcomings that were a part of the first two eras, thus leading to today's *community era*. Discussed next are the structures and functions of selected major federal law enforcement agencies and **organizations** that compose the Department of Homeland Security and Department of Justice (the world's premier international crime-fighting organization, INTERPOL, is described briefly in this section as well). After a discussion of the primary duties of state-level law enforcement organizations, next is a review of local law enforcement—municipal police and county sheriff's agencies. The chapter concludes with general discussions of how to pursue a law enforcement career, as well as the field of private policing.

Note the more general and broad area of police reform is discussed in a later chapter.

ENGLISH AND COLONIAL ROOTS: AN OVERVIEW

All four of the primary criminal justice officials of early England—sheriff, constable, coroner, and justice of the peace—either still exist or existed until recently in the United States. Accordingly, it is important to grasp a basic understanding of these offices, including their early functions in England and, later, in America.

Sheriff

The word **sheriff** is derived from *shire-reeve*—*shire* meaning “county” and *reeve* meaning “agent of the king.” The shire-reeve appeared in England before the Norman Conquest of 1066. His job was to maintain law and order in the tithings (groupings of 10 households). At the present time in England, a sheriff’s only duties are to act as an officer of the court, to summon juries, and to enforce civil judgments.⁵

The first sheriffs in America appeared in the early colonial period. Today, the American sheriff remains the basic source of rural crime control. Sheriff’s offices are discussed more later.

Constable

Like the sheriff, the **constable** can be traced back to Anglo-Saxon times. The office began during the reign of Edward I, when every parish or township had a constable. As the county militia turned more and more to matters of defense, only the constable pursued felons. Hence, the ancient custom of citizens raising a loud “hue and cry” and joining in pursuit of criminals lapsed into disuse. The constable had a variety of duties, including collecting taxes, supervising highways, and serving as magistrate. The office soon became subject to election and was conferred upon local men of prominence. The creation of the office of justice of the peace around 1200 quickly changed this trend forever; soon, the constable was limited to making arrests only with warrants issued by a justice of the peace. As a result, the office, deprived of social and civic prestige, was no longer attractive. It carried no salary, and the duties were often dangerous.⁶ In the American colonies, the position fell into disfavor largely because most constables were untrained and believed to be wholly inadequate as officials of the law.⁷

Coroner

The office of **coroner** has been used to fulfill many different roles throughout its history and has changed steadily over the centuries since it began functioning by the end of the 12th century. From the beginning, the coroner was elected; his duties included oversight of the interests of the Crown, including criminal matters. In felony cases, the coroner could conduct a preliminary hearing, and the sheriff often came to the coroner’s court to preside over the coroner’s jury. This “coroner’s inquest” determined the cause of death and the party responsible for it. Initially, coroners were given no compensation, yet they were elected for life. Soon, however, they were given the right to charge fees for their work.⁸ The office was slow in gaining recognition in America, as many of the coroners’ duties were already being performed by the sheriffs and justices of the peace. By 1933, the coroner was recognized as a separate office in two thirds of the states. By then, however, the office had been stripped of many of its original functions. Today in many states, the coroner legally serves as sheriff when the elected sheriff is disabled or disqualified. However, since the early part of the 21st century the coroner has basically performed a single function: determining the causes of all deaths by violence or under suspicious circumstances.⁹

Justice of the Peace

The **justice of the peace (JP)** can be traced back as far as 1195 in England. Early JPs were wealthy landholders. The duties of JPs eventually included the granting of bail to felons, which led to corruption and criticism as the justices bailed out people who clearly should not have been released into the community. By the 16th century, the office came under criticism again because of the caliber of the people holding it (wealthy landowners who bought their way into office).¹⁰ By the early 20th century, England had abolished the property-holding requirement, and many of the medieval functions of the JP’s office were removed. Thereafter, the office possessed strictly extensive criminal jurisdiction but no civil jurisdiction whatsoever. This contrasts with the American system, which gives JPs limited jurisdiction in both criminal and civil cases. By 1930, the office had constitutional status in all of the states. JPs have long been allowed to collect fees for their services. As in England, it is typically not necessary to hold a law degree or to have pursued legal studies in order to be a JP in the United States.¹¹

Police Reform in England, 1829

In England after the end of the Napoleonic Wars in 1815, workers protested against new machines, food riots, and an ongoing increase in crime. The British army, traditionally used to disperse rioters, was becoming less effective as people began resisting its commands. In 1822, England's ruling party, the Tories, moved to consider new alternatives. The prime minister appointed Sir Robert Peel to establish a police force to combat the problems. Peel, a wealthy member of Parliament,¹² finally succeeded in 1829 when Parliament passed the Metropolitan Police Act. The London police are nicknamed “bobbies” after Sir Robert Peel.¹³ Peel's remark that “the police are the public, and the public are the police” emphasized his belief that the police are first and foremost members of the larger society.¹⁴

POLICING COMES TO THE UNITED STATES

This section provides an overview of the three eras of U.S. policing—political, reform, and community—that were shaped and defined by the varying goals and philosophies of each over time.

The Political Era, 1840s–1930s

In 1844, the New York state legislature passed a law establishing a full-time preventive police force for New York City. However, this new body came into being in a very different form than in Europe. The American version, as begun in New York City, was deliberately placed under the control of the city government and city politicians. The American plan required that each ward in the city be a separate patrol district, unlike the European model, which divided the districts along the lines of criminal activity. The process for selecting officers was also different. The mayor chose the recruits from a list of names submitted by the aldermen and tax assessors of each ward; the mayor then submitted his choices to the city council for approval. This system resulted in most of the power over the police going to the ward aldermen, who were seldom concerned about selecting the best people for the job. Instead, the system allowed and even encouraged political patronage and rewards for friends.¹⁵

This was the **political era** of policing, from the 1840s to the 1930s. Politics were played to such an extent that even nonranking patrol officers used political backers to obtain promotions, desired assignments, and transfers.

Police corruption also surfaced at this time. Corrupt officers wanted beats close to the gamblers, saloonkeepers, madams, and pimps—people who could not operate if the officers were “untouchable” or “100 percent coppers.”¹⁶ Political pull for corrupt officers could work for or against them; the officer who incurred the wrath of his superiors could be transferred to the outposts, where he would have no chance for financial advancement.

Still, it did not take long for other cities to adopt the general model of the New York City police force. New Orleans and Cincinnati adopted plans for a new police force in 1852; Boston and Philadelphia followed in 1854, Chicago in 1855, and Baltimore and Newark in 1857.¹⁷ By 1880, virtually every major American city had a police force based on Peel's model.

The Reform Era, 1930s–1980s

During the early 20th century, reformers sought to reject political involvement by the police, and civil service systems were created to eliminate patronage and ward influences in hiring and firing police officers. In some cities, officers were not permitted to live in the same beat they patrolled in order to isolate them as completely as possible from political influences.¹⁸ However, policing also became a matter






Sir Robert Peel's “bobbies” were established in London in 1829.

Hulton Archive/Stringer/Hulton Archive/Getty Images

viewed as best left to the discretion of police executives. Any noncrime activities required of police were considered “social work.” The **reform era** (also termed “the professional era”) of policing would soon be in full bloom.

FIGURE 5.1 ■ The Crib of Modern Law Enforcement: August Vollmer and the Berkeley Police Department

1905—	Vollmer is elected Berkeley town marshal.	
1906—	Trustees create detective rank. Vollmer initiates a red light signal system to reach beat officers from headquarters; telephones are installed in boxes. A police records system is created.	
1908—		Two motorcycles are added to the department. Vollmer begins a police school.
1909—	Trustees approve the appointment of a Bertillon expert and the purchase of fingerprinting equipment. A modus operandi file is created, modeled on the British system.	
1911—	All patrol officers are using bicycles.	
1914—	Three privately owned autos are authorized for patrol use.	
1915—	A central office is established for police reports.	
1916—	Vollmer urges Congress to establish a national fingerprint bureau (later created by the FBI in Washington, D.C.), begins annual lectures on police procedures, and persuades a biochemist to install and direct a crime laboratory at police headquarters.	
1917—		Vollmer guides the development of the first lie detector and begins developing radio communications between patrol cars, handwriting analysis, and use of business machine equipment (a Hollerith tabulator).
1918—		Entrance examinations are initiated to measure the mental, physical, and emotional fitness of recruits; a part-time police psychiatrist is employed.
1919—	Vollmer begins testing delinquents and using psychology to anticipate criminal behavior. He implements a juvenile program to reduce child delinquency.	
1921—	Vollmer has the first completely motorized force; officers furnish their own automobiles. Vollmer recruits college students for part-time police jobs.	

The policing career of August Vollmer has been established as a major factor in the shaping and development of police professionalism, or the reform era (see Figure 5.1). In April 1905 at age 29, Vollmer became the town marshal in Berkeley, California; as indicated earlier, this was a time when police departments were notorious for their corruption and politics.

Vollmer commanded a force of only three deputies; his first act as town marshal was to request an increase in his force to 12 deputies in order to form day and night patrols.¹⁹ Obtaining that, he soon won national publicity for being the first chief to order his men to patrol on bicycles (his research demonstrated that officers on bicycles would be able to respond 3 times more quickly to calls for service than men on foot). Vollmer then persuaded the Berkeley City Council to purchase a system of red lights. The lights, hung at each street intersection, served as an emergency notification system for police officers—the first such signal system in the country.²⁰

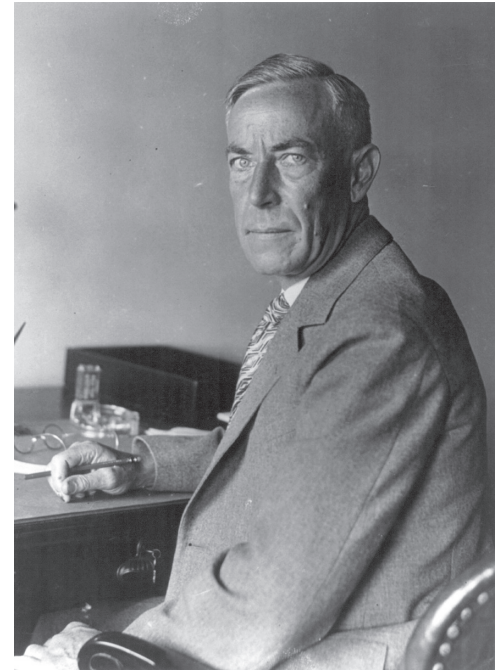
In 1906, Vollmer began to question the suspects he arrested, finding that nearly all criminals used their own peculiar method of operation, or *modus operandi*. In 1907, he sought the advice of a professor of biology at the University of California, becoming convinced of the value of scientific knowledge in criminal investigation.²¹ Vollmer's most daring innovation, however, came in 1908 with the idea of a formal police school that drew on the expertise of university professors and included courses on police methods and procedures, fingerprinting, first aid, criminal law, anthropometry, photography, and public health. In 1916, he persuaded a professor of pharmacology and bacteriology to become a full-time criminalist supervising the department's criminal investigation laboratory. By 1917, Vollmer had his entire patrol force operating out of automobiles; it was the first completely mobile patrol force in the country.²² In 1918, to improve the quality of police recruits in his department, Vollmer began to hire college students as part-time officers and to administer a set of intelligence, psychiatric, and neurological tests to all applicants (out of this group of "college cops" came several outstanding and influential police leaders across the United States). Finally, in 1921, in addition to experimenting with the lie detector, two of Vollmer's officers installed a crystal set and earphones in a Model T touring car, thus creating the first radio car.²³

The crime-fighter image gained popularity under the reform model of policing, when officers were to remain in their "rolling fortresses," going from one call to the next with all due haste. Much police work was driven by *numbers*—numbers of arrests and calls for service, response time to calls for service, numbers of tickets written and miles driven by a patrol officer during a duty shift, and so on. For many people, like Los Angeles chief of police William Parker, the police were the "thin blue line," protecting society from barbarism. Parker viewed urban society as a jungle, needing the restraining hand of the police; the police had to enforce the law without fear or favor. Parker opposed any restrictions on police methods. The law, he believed, should give the police wide latitude to use wiretaps and to conduct search and seizure.²⁴

The Community Era, 1980s–Present

Today, policing is in the **community era**, practicing community policing and problem-solving. This strategy was born because of the problems that overwhelmed the reform era, beginning in the 1960s. During the reform era, officers had little long-term effect in dealing with crime and disorder; they were neither trained nor encouraged to consider the underlying causes of problems on their beats.²⁵

In addition, several studies struck at the very heart of traditional police methods. For example, it was learned that response time had very little to do with whether or not an arrest was made at the scene; detectives were greatly overrated in their ability to solve crimes²⁶; less than 50% of an officer's time was committed to calls for service; and of those calls handled, more than 80% were noncriminal incidents.²⁷ As a result, a new "common wisdom" of policing came into being. The police were trained to work with the community to solve problems by looking at their underlying causes and developing tailored responses to them.



Chief August Vollmer developed many "firsts" in the Berkeley, California, Police Department during the professional (reform) era of policing.

Library of Congress, Prints & Photographs Division LC-USZ62-69954

FEDERAL LAW ENFORCEMENT

Federal law enforcement agency personnel make more than 150,000 arrests per year. More than half (46%) are for immigration crimes, most of which are in the five judicial districts along the U.S.-Mexican border. About one in seven (15%) of all federal arrests are for drug offenses, and another 15% are for supervision violations (failure to appear, probation, and so on).²⁸

Most **federal law enforcement agencies** are found within the Department of Homeland Security (DHS) and the Department of Justice (see Table 5.1), both of which are discussed in this section (note the Central Intelligence Agency, or CIA, works as an independent agency).

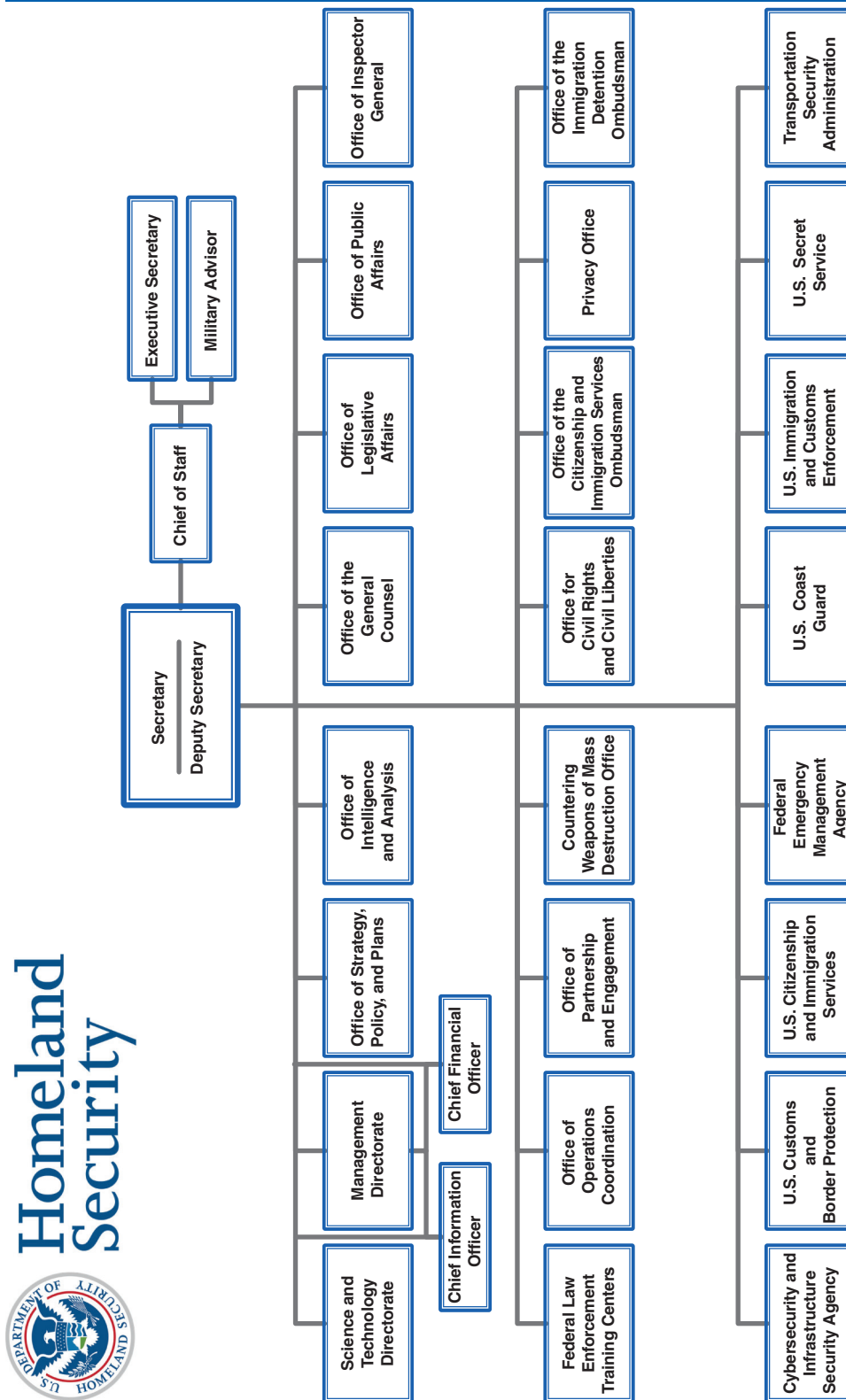
TABLE 5.1 ■ Selected Federal Law Enforcement Agencies
Department of Homeland Security
Citizenship and Immigration Services
Customs and Border Protection (CBP)
Immigration and Customs Enforcement (ICE)
Secret Service
Transportation Security Administration (TSA)
Coast Guard
Federal Protective Service
Cybersecurity and Infrastructure Security Agency (CISA)
Department of Justice
Federal Bureau of Investigation (FBI)
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
United States Marshals Service (USMS)
Drug Enforcement Administration (DEA)
Bureau of Prisons (BOP)

Department of Homeland Security

Within 1 month of the terrorist attack on U.S. soil on September 11, 2001, President George W. Bush issued a proposal to create a new Department of Homeland Security (DHS)—which was established in November 2002 and became the most significant transformation of the U.S. government in over a half century. All or parts of 22 different federal departments and agencies were combined, beginning in January 2003, and 80,000 new federal employees were immediately put to work.²⁹ Congress committed \$32 billion toward safeguarding the nation, developing vaccines to protect against biological or chemical threats, training and equipping first responders (local police, firefighters, and medical personnel), and funding science and technology projects to counter the use of biological weapons and assess vulnerabilities. It has been estimated that, since 9/11, outlays for homeland security efforts have totaled more than \$1 trillion.³⁰ Figure 5.2 shows the current organizational structure of the DHS.

The following paragraphs are brief descriptions of the major law enforcement agencies organizationally located within the DHS; all of them have full law enforcement authority. (*Note:* A number of additional federal agencies have law enforcement authority and are not discussed here, including the Federal Bureau of Prisons, U.S. Forest Service, U.S. Fish and Wildlife Service, U.S. Capitol Police, U.S. Mint Police, and the Bureau of Indian Affairs.)

- *Customs and Border Protection (CBP)* is one of the largest federal law enforcement agencies, with more than 60,000 agents. CBP is responsible for preventing terrorists and terrorist weapons from entering the United States while facilitating the flow of legitimate trade and travel. CBP protects nearly 7,000 miles of border with Canada and Mexico and 95,000 miles of shoreline.³¹ On a typical day, CBP processes more than 650,000 passengers and pedestrians,

FIGURE 5.2 ■ Department of Homeland Security Organizational Structure

Source: Department of Homeland Security, https://www.dhs.gov/sites/default/files/publications/21_0402_dhs-organizational-chart.pdf.

apprehends more than 1,100 criminal suspects at ports of entry, and seizes more than 3,600 pounds of narcotics.³²

- *Immigration and Customs Enforcement (ICE)* is the largest investigative arm of the DHS, with about 20,000 law enforcement and support personnel in more than 400 offices in the United States and around the world.³³ ICE is responsible for identifying and shutting down vulnerabilities both in the nation's borders and in economic, transportation, and infrastructure security.³⁴ On a typical day, ICE will seize 4,000 pounds of narcotics, make nearly 400 criminal arrests, seize nearly \$5 million in illicit currency and assets, and manage 3.25 immigration cases.³⁵
- The *Transportation Security Administration (TSA)* protects the nation's transportation systems. TSA employs about 50,000 personnel at more than 450 airports and field offices. TSA's organization includes federal air marshals, who are armed federal law enforcement officers deployed on passenger flights worldwide to protect airline passengers and crew against the risk of criminal and terrorist violence.³⁶ Each day, TSA screens more than 2 million passengers and 5.5 million carry-on items for about 23,000 domestic flights and 2,600 outbound international flights.³⁷
- The *Coast Guard* is the nation's leading maritime law enforcement agency; it has broad police power to enforce, or assist in enforcing, federal laws and treaties on waters under U.S. jurisdiction and other international agreements on the high seas. Its officers possess the civil authority to board any vessel subject to U.S. jurisdiction; once aboard, they can inspect, search, inquire, and arrest.³⁸
- The *Secret Service* employs about 3,200 special agents, 1,300 uniformed officers, and more than 2,000 specialized/technical support personnel.³⁹ Its agents protect the president and other high-level officials and investigate counterfeiting and other financial crimes, including financial institution fraud, identity theft, computer fraud, and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure. The Secret Service's domestic Uniformed Division protects the White House complex and the vice president's residence as well as foreign embassies and missions in the Washington, DC, area. The Secret Service has agents assigned to approximately 125 offices located in cities throughout the United States and in select foreign cities.⁴⁰
- The *Federal Protective Service* within the DHS employs about 1,000 law enforcement police officers, criminal investigators, security officers, and support personnel (as well as more than 10,000 contract security personnel); they focus on federal facilities (e.g., buildings, dams, power plants) and identify and assess threats, conduct surveillance, monitor suspicious activity, undertake deterrence patrols, engage in community policing activities, and oversee screening operations for 9,000 federal facilities worldwide.⁴¹
- The *Cybersecurity and Infrastructure Security Agency (CISA)*, created in November 2018, is a standalone United States federal agency of DHS oversight and is responsible for coordinating the effort to protect critical infrastructure and working with other government agencies and the private sector to prevent cyberattacks against the nation.⁴²

Federal Law Enforcement Training Center (FLETC)

The Federal Law Enforcement Training Center (FLETC) provides dozens of basic and advanced training courses each year and serves as the primary provider of law enforcement training for more than 90 federal agencies (attending a basic program at FLETC is typically a requirement for employment with a U.S. federal agency). It is a component of the DHS but also provides training for state, local, and tribal agencies. The center is headquartered in Glynco, Georgia, where it occupies a 1,500-acre campus with state-of-the-art classrooms. Other domestic campuses are located in Artesia, New Mexico; Charleston, South Carolina; and Cheltenham, Maryland.⁴³



Homeland Security comprises multiple law enforcement agencies, including officers performing baggage screening at national airports.

DHS Photo by Cynthia Bennett

Department of Justice

The Department of Justice (DOJ) is headed by the attorney general, who is appointed by the U.S. president and confirmed by the Senate. The president also appoints the attorney general's assistants and the U.S. attorneys for each of the judicial districts. The U.S. attorneys in each judicial district control and supervise all federal criminal prosecutions and represent the government in legal suits in which it is a party. These attorneys may appoint committees to investigate other governmental agencies or offices when questions of wrongdoing are raised or when possible violations of federal law are suspected or detected.

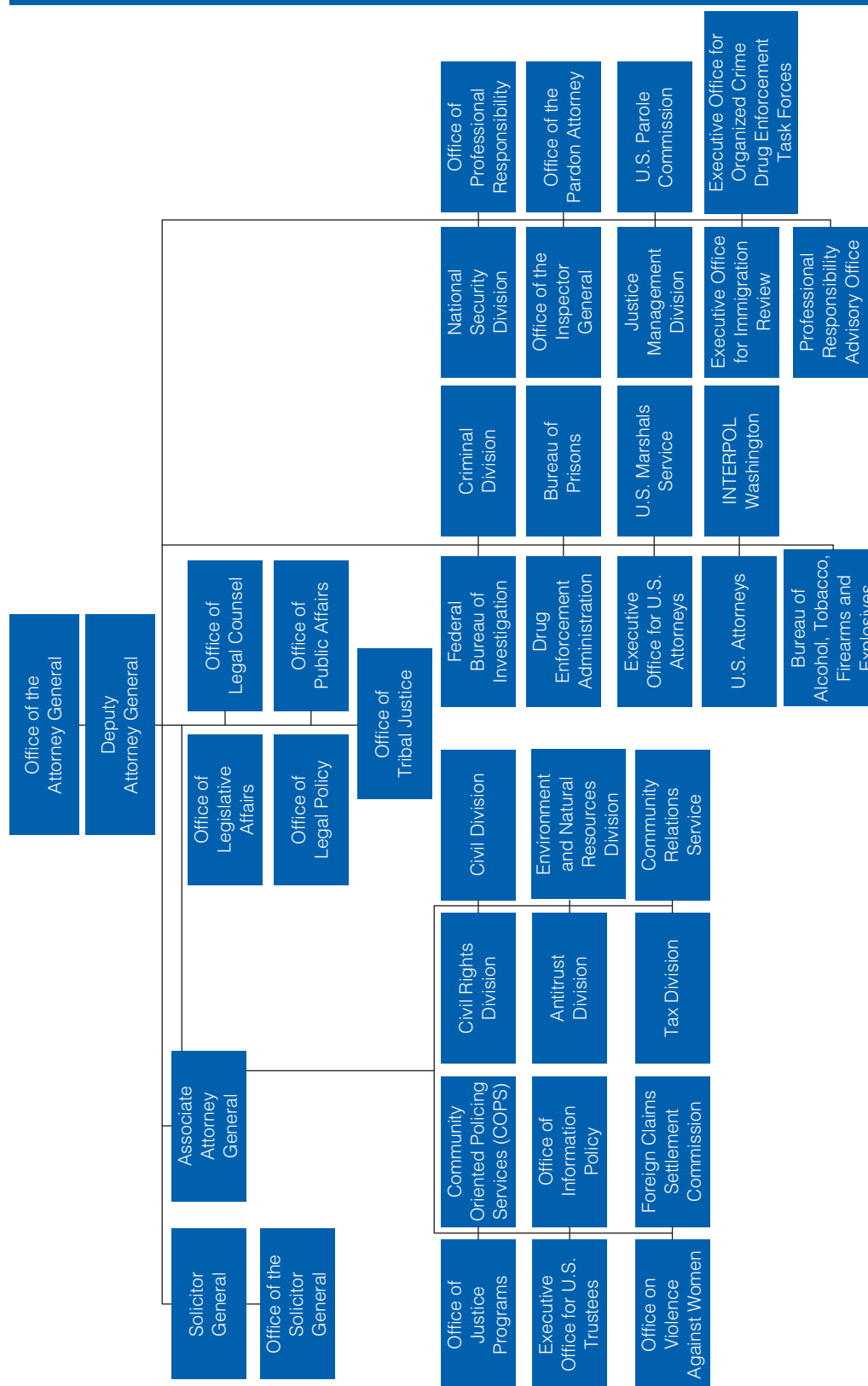
The DOJ is the official legal arm of the U.S. government. Within the Justice Department are several law enforcement organizations that investigate violations of federal laws; we discuss the Federal Bureau of Investigation; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; and U.S. Marshals Service in the sections that follow. Figure 5.3 shows the organizational chart for the Department of Justice.

Federal Bureau of Investigation

The Federal Bureau of Investigation (FBI) was created and funded through the Department of Justice Appropriation Act of 1908. A new era was begun for the FBI in 1924 with the appointment of J. Edgar Hoover, who was determined to professionalize the organization, as director. Special agents were college graduates, preferably with degrees in law or accounting. During Hoover's tenure in office, many notorious criminals, such as Bonnie Parker, Clyde Barrow, and John Dillinger, were tracked and captured or killed.⁴⁴

The bureau's top four priority areas are to protect the United States

1. From terrorist attacks.
2. Against foreign intelligence operations and espionage.
3. Against cyberattacks and high-tech crimes.
4. Against public corruption at all levels.

FIGURE 5.3 ■ Department of Justice Organizational Chart

Source: U.S. Department of Justice.

Other priorities are to protect civil rights, combat transnational/national criminal organizations and enterprises, combat major white-collar crime, and combat significant violent crime.⁴⁵

Today, the FBI has 56 field offices, approximately 350 resident agencies, and more than 60 foreign liaison posts called legal attachés. About 35,000 agents, analysts, and support employees perform professional, administrative, technical, and other functions.⁴⁶

To combat terrorism, the Bureau can now monitor internet sites, libraries, churches, and political organizations. In addition, under revamped guidelines, agents can attend public meetings for the purpose of preventing terrorism.⁴⁷ The FBI's laboratory examines blood, hair, firearms, paint, handwriting, typewriters, and other types of evidence—at no charge to state police and local police agencies. The FBI also operates the National Crime Information Center (NCIC), through which millions of records—including wanted persons as well as stolen vehicles and all kinds of property items or any object with an identifying number—are entered. The FBI also publishes the annual *Uniform Crime Reports*, discussed in Chapter 2.

The FBI's Special Agent Selection System is described in an “All You Need to Know to Apply” brochure (<https://www.fbijobs.gov/sites/default/files/how-to-apply.pdf>; also see FBI job postings by clicking on the “Search Jobs” tab from the main <https://www.fbijobs.gov> page). Although simplistic in its appearance, the process involves a number of individual activities by applicants and FBI personnel at each phase and typically requires 1 year or longer to complete.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) originated as a unit within the Internal Revenue Service in 1862, when certain alcohol and tobacco tax statutes were created. Like the FBI and several other federal agencies, ATF has a rich and colorful history, much of which involved capturing bootleggers and disposing of illegal whiskey stills during Prohibition. ATF administers the U.S. criminal code provisions concerning alcohol and tobacco smuggling and diversion. ATF also maintains a U.S. Bomb Data Center (to collect information on arson- and explosives-related incidents) and a Bomb and Arson Tracking System, which allows local, state, and other federal agencies to share information about bomb and arson cases.⁴⁸

Today, ATF has about 5,100 full-time employees, 2,650 of whom are special agents in 25 field divisions; agents work nearly 42,000 cases per year (approximately 94% of which are firearms cases, and the remainder being arson, explosives, and alcohol and tobacco cases).⁴⁹

Drug Enforcement Administration (DEA)

Today's Drug Enforcement Administration (DEA) had its origin with the passage of the Harrison Narcotics Tax Act, signed into law on December 17, 1914, by President Woodrow Wilson.⁵⁰ It was created as the DEA by President Richard Nixon in July 1973 in order to create a single federal agency to coordinate and enforce the federal drug laws. In 1982, the organization was given primary responsibility for drug and narcotics enforcement, sharing this jurisdiction with the FBI. Briefly, major responsibilities of the more than 4,650 DEA agents, under the U.S. Code, include the following: investigation of, and coordination with, major violators of controlled substance laws in domestic and international venues; management of a national drug intelligence program in cooperation with federal, state, local, and foreign officials; and seizure and forfeiture of assets derived from, traceable to, or intended to be used for illicit drug trafficking.⁵¹ The DEA makes about 26,000 arrests per year.⁵²

U.S. Marshals Service (USMS)

The U.S. Marshals Service (USMS) is one of the oldest federal law enforcement agencies, established under the Judiciary Act of 1789. Today, the USMS has 94 U.S. marshals, one for each federal court district. The USMS employs about 3,750 deputy U.S. marshals and criminal investigators, who arrest



J. Edgar Hoover was the first director of the Federal Bureau of Investigation and served in that capacity from 1924 until his death in 1972 at age 77.

Library of Congress Prints and Photographs Division, Harris & Ewing

about 77,000 fugitives per year, transport federal prisoners, protect about 2,700 federal judges in 866 federal judicial facilities, and provide security for prosecutors and witnesses; they also conduct courthouse threat analyses and investigations and perform security, rescue, and recovery activities for natural disasters and civil disturbances.⁵³ Each district headquarters office is managed by a politically appointed U.S. marshal and a chief deputy U.S. marshal, who direct a staff of supervisors, investigators, deputy marshals, and administrative personnel. The USMS also operates the Witness Security Program. Federal witnesses are sometimes threatened by defendants or their associates; if certain criteria are met, the USMS will provide a complete change of identity for witnesses and their families, including new Social Security numbers, residences, and employment. In 1971, the USMS created the Special Operations Group (SOG), consisting of a well-trained elite group of deputy marshals that could respond to priority or dangerous missions anywhere within the United States within a few hours.⁵⁴

Other Federal Agencies

Two other significant federal agencies outside of the Department of Justice with unique missions and contributions to the enforcement of the U.S. Code are the Central Intelligence Agency and the Internal Revenue Service.

Central Intelligence Agency (CIA)

Although not a law enforcement agency, the Central Intelligence Agency (CIA) is of significance at the federal level to the nation's security and warrants a brief discussion. The National Security Act of 1947 established the National Security Council, which in 1949 created a subordinate organization, the CIA. Considered the most clandestine government service, the CIA participates in undercover and covert operations around the world for the purposes of managing crises and providing intelligence.⁵⁵ The agency offers career opportunities in five broad areas (analysis, clandestine activities, STEM, enterprise/support, and foreign language) as well as undergraduate student scholarship and internship opportunities.⁵⁶

Internal Revenue Service (IRS)

The Internal Revenue Service (IRS) has as its main function the monitoring and collection of federal income taxes from American individuals and businesses. Since 1919, the IRS has had a criminal investigation (CI) division employing "accountants with a badge." While other federal agencies also have investigative jurisdiction for money laundering and some Bank Secrecy Act violations, the IRS is the only federal agency that can investigate potential criminal violations of the Internal Revenue Code.⁵⁷ The CI branch of the IRS comprises approximately 3,100 employees worldwide, about 2,000 of whom are special agents whose investigative jurisdiction includes tax, money laundering, and Bank Secrecy Act laws.⁵⁸

INTERPOL

Both the U.S. Department of Justice and U.S. Department of Homeland Security work with the International Criminal Police Organization, better known as **INTERPOL**; this is the oldest, the best-known, and probably the only truly international crime-fighting organization for crimes committed on an international scale, such as drug trafficking, bank fraud, money laundering, and counterfeiting. INTERPOL agents do not patrol the globe, nor do they make arrests or engage in shoot-outs. They are basically intelligence gatherers who have helped many nations work together in attacking international crime since 1923. Lyon, France, serves as the headquarters for INTERPOL's crime-fighting tasks and its 194 member countries. INTERPOL focuses on cybercrime, corruption, drugs, financial and high-tech crime, fugitives, maritime piracy, organized crime, terrorism (including bioterrorism), and human trafficking. Its website states it can have an Incident Response Team deployed anywhere within the world in 12 to 24 hours and that it manages 19 police databases with 114 million records of known criminals, wanted persons, facial recognition, fingerprints, DNA profiles, stolen or lost travel documents, stolen motor vehicles, child sex abuse images, and stolen works of art.⁵⁹ Its Article 3 states it does not become involved with political, racial, or religious matters.⁶⁰

STATE AGENCIES

As with federal law enforcement organizations, a variety of organizations, duties, and specializations can be found in the 50 states—although, generally, state troopers and highway patrol officers perform a lot of the same functions as their county and municipal counterparts: enforcing state statutes, investigating criminal and traffic offenses (and, by virtue of those roles, knowing and applying laws of arrest, search, and seizure), making arrests, testifying in court, communicating effectively in both oral and written contexts, using firearms and self-defense tactics proficiently, and effectively performing pursuit driving, self-defense, and lifesaving techniques until a patient can be transported to a hospital. Such agencies also maintain a wide array of special functions, including special weapons and tactics (SWAT) teams, drug units and task forces, marine and horse patrol, and so on.⁶¹



While many state troopers are, by statute, authorized to provide traffic control on their state's highways, others can conduct criminal investigations. Here, Georgia troopers investigate a shooting.

© John Spink/Atlanta Journal-Constitution via AP

Patrol, Police, and Investigative Organizations

Perhaps the first distinction that might be made at the state level is between state police or highway patrol organizations and the state bureaus of investigation. Each state's statutes—and, often, the agency's name—will indicate the types of functions their agencies are authorized to perform. For example, a state's *highway patrol* division typically patrols and investigates crashes on the state highway system, while an agency that is officially named a **state police** organization typically performs a broader array of law enforcement functions in addition to those related to traffic. As an example, although the Missouri State Highway Patrol states on its website its troopers provide assistance to motorists and “investigate highway traffic crashes and other roadway emergencies,” it also states “other responsibilities include assisting local peace officers upon request, investigating crimes, and enforcing criminal laws.”⁶²

Some agencies are even designated as *public safety* organizations and often encompass several agencies or divisions. For example, the Hawaii Department of Public Safety, by statute, includes a law enforcement division (with general arrest duties, a narcotics division, a sheriff division, and an executive protection unit), a corrections division (handling inmate intake, incarceration, paroling authority, and industries), and a victim compensation commission.⁶³ **State bureaus of investigation (SBIs)**, as their name implies, are investigative in nature and might be considered a state's equivalent to the FBI; they investigate all manner of cases assigned to them according to their state's laws and usually report to the state's attorney general. SBI investigators are plainclothes agents who usually investigate both

criminal and civil cases involving the state and/or multiple jurisdictions. They also provide technical support to local agencies in the form of laboratory or record services and may be asked by city and county agencies to assist in investigating more serious crimes (e.g., homicide).

Other Special-Purpose State Agencies

In addition to the traffic, investigative, and other units mentioned earlier, several other **special-purpose state agencies**, including police and other law enforcement organizations, have developed over time to meet particular needs. For example, many state attorney general's offices have units and investigators that investigate white-collar crimes; fraud against or by consumers, Medicare providers, and food stamp recipients; and crimes against children and seniors.⁶⁴

States may also have limited-purpose units devoted to enforcing the following:

- Alcoholic beverage laws (regarding the distribution and sale of such beverages, monitoring bars and liquor stores, etc.)
- Fish and game laws (relating to hunting and fishing, to ensure that persons who engage in these activities have proper licenses and do not poach, hunt, or fish out of season, exceed their limit, etc.)
- State statutes and local ordinances on college and university campuses
- Agricultural laws, to include cattle brand inspection and enforcement
- Commercial vehicle laws, such as those federal and state laws pertaining to weights and permits of interstate carriers (i.e., tractor-trailer rigs) and ordinances applying to taxicabs
- Airport laws—in addition to TSA employees (discussed earlier), airport police provide support for the local city/county police by enforcing statutes and ordinances; patrolling (foot and vehicle); monitoring threats to people, property, and aircraft; and generally providing information and service to the traveling public

LOCAL AGENCIES: MUNICIPAL POLICE DEPARTMENTS AND SHERIFF'S OFFICES

Today, Sir Robert Peel (discussed earlier in this chapter) would be amazed; according to the federal Bureau of Justice Statistics, there are now about 18,000 federal, state, county, and municipal police agencies in the United States,⁶⁵ with municipal agencies comprised of about 468,000 sworn full-time police officers⁶⁶ and sheriff's offices employing about 173,000 sworn full-time deputies.⁶⁷ The vast majority of these organizations (80% of police agencies, 86% of sheriff's departments) require only a high school diploma to be hired, while only 20% of police and 14% of sheriff's departments require recruits to have a specified amount of college experience.⁶⁸ The average annual wage for municipal officers and county deputies is about \$67,500, per the U.S. Bureau of Labor Statistics.⁶⁹

Basic Operations

Following is a brief overview of their employee composition, educational requirements, starting salaries, and some authorized equipment. **Municipal police departments** provide a range of enforcement, investigative, and order-maintenance functions; about one in eight of these sworn employees is female, and one in four is a member of a racial or ethnic community. About 3% of all local police departments serve populations of 100,000 or more residents, and more than two thirds serve populations of less than 10,000. Generally, the larger the department, the greater the number of officers per capita, the higher the percentage of officers who are female and from underrepresented populations, and the more likely the agency is to have personnel designated to specific units (such as school resource officer, domestic violence, gangs, drug enforcement, financial crimes, and missing children).⁷⁰

In **county sheriff's offices**, about one in seven sworn employees is a woman, and 20% are members of a racial or ethnic community. About half (55%) of sheriff's departments employ fewer than 25 sworn personnel.⁷¹ As with local police departments, generally the larger the department, the greater the number of officers per capita, the higher the percentage of officers who are female and from under-represented populations, and the more likely the agency is to have personnel designated to address specific crimes and issues.⁷²

Because of the diversity of sheriff's offices throughout the country, it is difficult to describe a "typical" office. In addition to the aforementioned investigative, enforcement, and order-maintenance duties found in municipal police agencies, sheriff's offices are found to do the following:

- Maintain and operate county correctional institutions
- Serve civil processes (protective orders, liens, evictions, garnishments, and attachments) and perform other civil duties, such as extradition and transportation of prisoners
- Collect certain taxes and conduct real estate sales (usually for nonpayment of taxes) for the county
- Serve as bailiff of the courts

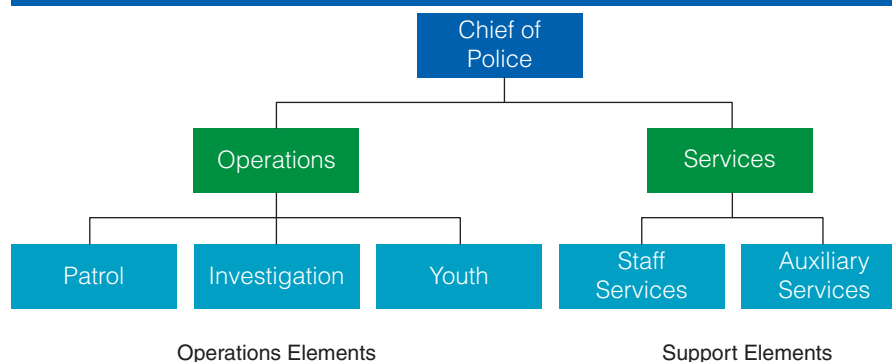
In a later chapter, we will consider the kinds of screening methods used in hiring new officers, as well as typical topics covered in basic recruit academies. For more related discussion, see the "Interested in a Career?" section later in this chapter.

Organization

Every police agency, no matter what its size, has an **organizational structure or chart**, even though it may not be prominently displayed for all to see in the agency's facility—or it may not even be written down at all. Even a community with only a town marshal has an organizational structure, although the structure will be very horizontal, with the marshal performing all of the functions displayed in Figure 5.4, the basic organizational chart for a small agency.

In Figure 5.4, agency operations, or line-element, personnel are engaged in active police functions in the field. They may be subdivided into primary and secondary operations elements. The patrol function—often called the backbone of policing—is the primary operational element because of its major responsibility for policing. In most small police agencies, patrol forces are responsible for all operational activities: providing routine patrols, conducting traffic and criminal investigations, making arrests, and functioning as generalists. The investigative and youth functions are the secondary operations elements. The support (or nonlinear) functions and activities can become quite numerous, especially in a large agency. These functions fall within two broad categories: staff (or administrative) services and auxiliary (or technical) services. The staff services usually involve personnel and include such matters as recruitment, training, promotion, planning and research, community relations, and public

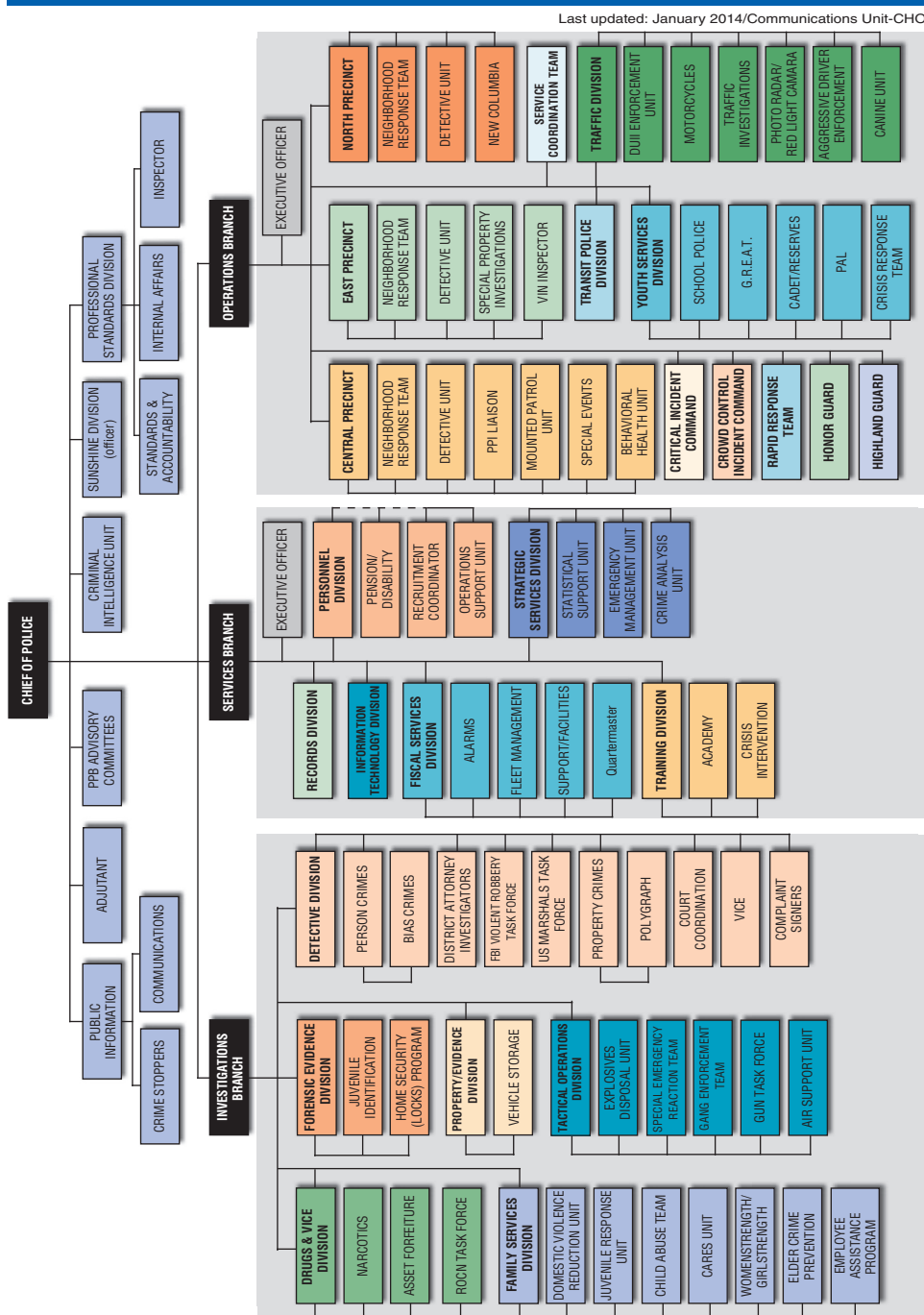
FIGURE 5.4 ■ A Basic Police Organizational Structure



information services. Auxiliary services are the kinds of functions that civilians rarely see. They include jail management, property and evidence, crime laboratory services, communications, and records and identification. Many career opportunities exist for those who are interested in police-related work but who cannot or do not want to be a field officer.

Greater specialization and variety of assignments may be seen in the organizational structure of a larger police organization, such as the Portland, Oregon, Police Bureau, shown in Figure 5.5. This

FIGURE 5.5 ■ Portland Police Bureau Organizational Chart



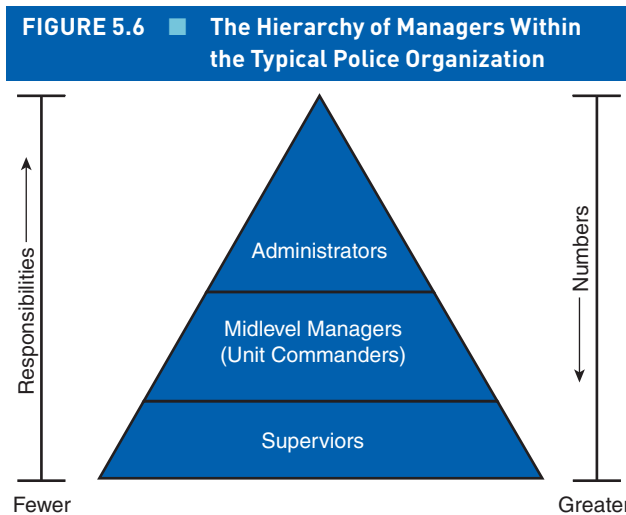
Source: City of Portland, Oregon, Police Bureau.

Note: PPI = Portland Patrol Inc. – uniformed security personnel who patrol in downtown; G.R.E.A.T. = Gang Resistance Education and Training; Sunshine Division is a program providing emergency food and clothing relief to needy persons and families

structure not only shows the various components of the organization but also apportions the workload among members and units, ensures that lines of authority and responsibility are as definite and direct as possible, and places responsibility and authority. In sum, this structure establishes the **chain of command** and determines lines of communication and responsibility.

Obviously, the larger the agency, the greater the need for specialization and the more vertical the organizational chart will become. With greater specialization comes the need and opportunity for officers to be assigned to different tasks, often rotating from one assignment to another after a fixed interval. For example, in a medium-sized department serving a community of 100,000 or more, it would be possible for a police officer with 10 years of police experience to have been a dog handler, a motorcycle officer, a detective, and a traffic officer while simultaneously holding a slot on the special-weapons or hostage negotiation team.

Finally, most municipal police and county sheriff's organizations follow what is termed a "paramilitary system" for assigning rank and responsibility. Typically found are administrators or chief executive officers (i.e., chiefs and assistant chiefs, sheriffs and assistant sheriffs), midlevel managers (captains and lieutenants), and first-line supervisors (sergeants, typically on the street overseeing officers' work) who ensure all levels of the organization work together toward a common goal. Figure 5.6 shows this hierarchy and how, as rank increases, responsibilities also increase even as the numbers of personnel assigned to the positions decrease.



PRACTITIONER'S PERSPECTIVE

POLICE LIEUTENANT



Name: Brian D. Fitch, PhD

Position: Police Lieutenant (retired), Los Angeles County Sheriff's Department

Location: Los Angeles, California

What are the primary duties and responsibilities of a practitioner in this position? In most law enforcement agencies, particularly municipal agency sheriff departments, the core function of what we do is patrol—what we call field operations. That's the officer or the deputy on the street, driving around in a marked vehicle, interacting with the public, enforcing the law, writing traffic citations, taking police reports, investigating crimes. That is, by far, the bulk of what we do. The public expects us to staff our shift with enough people to respond to their calls in a timely manner. They expect us to investigate a crime as soon as it's occurred. So the bulk of what officers do is devoted to the first-responder kind of fieldwork.

Law enforcement officers can be involved in anything...for example, where I'm currently assigned, we're constantly dealing with all kinds of things, from homicide to a body dump to investigating a traffic citation to arresting a drunk driver. But most of those functions are what we call line functions. Only a small percentage of a given agency is assigned to do detective work or to follow-up work. And that percentage becomes even smaller when you look at specialties with the detective work, like homicide. Some cities have relatively small populations or have a particularly small rate of crimes, and those cities may not have any homicides in a given year. So that doesn't lend itself toward having a whole team of homicide investigators.

Many smaller agencies will employ the resources of a larger agency here within Los Angeles County. The Los Angeles County Sheriff's Department homicide unit investigates homicides for a number of smaller municipal police agencies, some of whom have 80, 90, or 100 officers. They still defer to the sheriff's department because of the amount of time and resources involved. And some of these investigations get very lengthy. If you look at the idea of becoming a profiler, which has become popular on TV, you'll see that the LA County Sheriff's Department, an agency of 10,000 sworn people, has one profiler assigned. At the LAPD, we have one profiler assigned. So within the whole Southern California basin of about 10 million people, we have about two profilers. So landing a job like that is as much luck and timing as is anything else.

What are some challenges you face in this position? Going back historically, police officers were familiar with people on their beat, like shop owners, residents—they got to talk with people on a daily basis. They were able to develop relationships, and that was important because when people felt they needed to report a crime, they knew exactly where to go. So now, when we put our officers in cars, we're able to cover a lot of geographic area and we increase our overall visibility, but we lose that relationship with the community. Law enforcement can't do its job without the community. I believe it was Sir Robert Peel who said, "The police are the public and the public are the police." In order for us to do our job effectively, law enforcement can't be everywhere and we can't be all-knowing and all-doing. Law enforcement needs and must have both the support and involvement of the community. So this move toward community policing is a move toward involving the community in improving quality of life, helping law enforcement officers solve crimes, and just generally trying to rekindle that relationship between law enforcement and the people who we are sworn to serve and protect.

INTERESTED IN A CAREER? SOME GENERAL CONSIDERATIONS

Generally speaking, there are a number of common elements—often termed “KSAs” (for knowledge, skills, and abilities)—of employment in many federal, state, and local law enforcement positions, such as the following:

- U.S. citizenship and possession of a valid driver's license
- Age requirement (at the federal level, applicants must be less than 37 years of age)
- Written test
- Structured oral interview (typically consisting of situational questions posed by an oral board)

- Memory recall assessment (e.g., applicants might be provided with a person's photograph and identifying characteristics and then asked to recall as many details as possible)
- Medical exam (to test for any chronic disease or condition that could impair full performance of the job duties)
- Drug testing (typically, satisfactory completion of a drug test is a condition for placement)
- Background investigation⁷³

Furthermore, the following minimum qualifications may be in effect prior to an offer of employment, depending on the agency:

- A basic training program (typically of 4–6 months' duration) must be completed successfully.
- A person convicted of a crime of domestic violence cannot lawfully possess a firearm or ammunition (see 18 U.S.C. Section 1001).
- Persons required to carry a firearm while performing their duties must satisfactorily complete firearms training.
- Positions (particularly federal and state) may require mobility and relocation, including travel relating to the duties of the job and in terms of assignment to a duty station; applicants must also sign a mobility agreement.⁷⁴ At the federal level, a law enforcement availability pay bonus is provided to agents that is an additional 25% of their annual base pay.

Several websites are invaluable for persons seeking law enforcement careers. The following websites include information on qualifications, physical fitness and health standards, and pretraining requirements:

- USAJOBS, jobsearch.usajobs.gov (search for “Law Enforcement”)
- www.federallawenforcement.org/what-is-federal-law-enforcement/
- Careers With Federal Law Enforcement Agencies (www.federallawenforcement.org/careers/)
- The Balance Careers, “Federal Criminal Justice and Law Enforcement Careers” (www.thebalancecareers.com/federal-law-enforcement-jobs-974533)
- Federal Government Jobs (<http://www.federaljobs.net/law.htm>)
- Police1, “Police Jobs and Law Enforcement Careers” (www.police1.com/police-careers/)

More general information concerning federal employment may be obtained from the federal government's human resources office, the Office of Personnel Management, at www.opm.gov.

Although some agencies require a high school diploma, others require at least a bachelor's degree. Grade point average (GPA) requirements can vary; in some federal agencies, a superior academic achievement pay bonus is available to those applicants with higher GPAs, and some agencies also provide a Foreign Language Award Program, which provides cash awards for persons qualifying. Some agencies prohibit employees from having visible body markings (tattoos, body art, branding) on the head, face, neck, and extremities.⁷⁵ Again, websites should be consulted for such requirements and proscriptions.

ON GUARD: THE PRIVATE POLICE

Much has changed in society and the private security industry since 1851, when Allan Pinkerton initiated the Pinkerton National Detective Agency, specializing in railroad security. Pinkerton established the first private security contract operation in the United States. His motto was “We Never Sleep,” and his logo, an open eye, was probably the genesis of the term “private eye.”

According to the late loss-prevention expert Saul Astor, “We are a nation of thieves”⁷⁶—and, it might be added, a nation that needs to be protected against would-be active shooters, terrorists, rapists, robbers, and other dangerous people. According to the federal Bureau of Justice Statistics, there are about 1.2 million violent-crime victimizations and 12.8 million property-crime victimizations each year in the United States.⁷⁷

As a result, and especially given the recent spate of mass shootings and ongoing gang activities, the United States has become highly security minded concerning its computers, lotteries, celebrities, college campuses, casinos, nuclear plants, airports, shopping centers, mass transit systems, hospitals, and railroads. Such businesses, industries, and institutions have recognized the need to conscientiously protect their assets against threats of crime and other disasters—as well as the limited capabilities of the nation’s full-time sworn officers and agents to protect them—and have increasingly turned to the “other police”—those of the private police or security—for protection.

According to the federal Bureau of Labor Statistics, today about 1.1 million **private police/security officers** provide such services (compared with about 700,000 full-time police officers and deputies); their median salary is about \$31,000 per year,⁷⁸ and about 1,100,000 jobs exist where people work in this position.⁷⁹ In-house security services, directly hired and controlled by the company or organization, are called **proprietary services**. **Contract services** are those outside firms or individuals hired by the individual or company to provide security services for a fee. The most common security services provided include contract guards, alarm services, private investigators, locksmith services, armored-car services, and security consultants.

Although some of the duties of the security officer are similar to those of the public police officer, their overall arrest powers are entirely different. First, because security officers are not police officers, court decisions have stated the security officer is not bound by the *Miranda* decision concerning suspects’ rights. Furthermore, security officers generally possess only the same authority to effect an arrest as does the common citizen (the extent of a citizen’s arrest power varies, however, depending on the type of crime, the jurisdiction, and the status of the citizen). In most states, warrantless arrests by private citizens are allowed when a felony has been committed and reasonable grounds exist for believing the person arrested committed it. Most states also allow citizen’s arrests for misdemeanors committed in the arrestee’s presence.

The tasks of the private police are similar to those of their public counterparts: protecting executives and employees, tracking and forecasting security threats, monitoring alarms, preventing and detecting fraud, conducting investigations, providing crisis management and prevention, and responding to substance abuse.⁸⁰ Still, probably since their inception there have been concerns about the field. First, studies have shown that security officer recruits often have minimal education and training; because the pay is usually quite low, the jobs often attract only those people who cannot find other jobs or who are seeking temporary work. Thus, much of the work is done by the young and the retired.⁸¹



Our society has increasingly turned to the “other police”—those of the private sector—for protection.

©iStockphoto.com/SDI Productions

Fortunately, however, over the past 2 decades, the private security field has seen gains in certification, standards, and academic programs in colleges and universities; increased professionalism through conferences, research and publications, and professional security associations; improved background screening for hiring security personnel; and improved training of security practitioners (22 states require basic training for licensed security personnel). Still, given today's headlines concerning police use of force, the industry must examine closely its traditional methods of training and qualification for use-of-force application and tactical skills.⁸²

Another issue concerns whether businesses or citizens should hire armed security personnel for added protection. To help one decide, consideration should be given to the crime rate and response time of police within one's area, how knowledgeable one is about handling emergency situations, whether one's employees tend to work late, and so on.⁸³

IN A NUTSHELL

- All four of the primary criminal justice officials of early England—sheriff, constable, coroner, and justice of the peace—either still exist or existed until recently in the United States.
- In 1829, Sir Robert Peel established professional policing as it is known today under the Metropolitan Police Act of 1829. Later, in 1844, the New York state legislature passed a law establishing a full-time preventive police force for New York City. However, this new body took a very different form than in Europe. The U.S. version was placed under the control of the city government and city politicians, thus launching the first era of policing: the political era, from the 1840s to the 1930s.
- The reform (also known as the professional) era of policing, from the 1930s to the 1980s, sought to remove police from political control. August Vollmer was a major contributor to this era, being the architect of many developments in policing that paved the way for today's practices. Civil service systems were created, and soon the crime-fighter image was projected; much police work was driven by *numbers*—arrests, calls for service, response time to calls for service, number of tickets written, and so on. The police were the “thin blue line,” but crimes continued to increase, and the police were becoming increasingly removed from their communities.
- The community era of policing, 1980s to the present, was born because of the problems that overwhelmed the reform era. The police were trained to work with the community to solve problems by looking at their underlying causes and developing tailored responses to them.
- At the federal level, agencies of the Department of Homeland Security were formed in 2003 to combat terrorism; agencies of the Department of Justice and other federal agencies support that and other efforts as well.
- State law enforcement agencies are of two primary types: (1) general law enforcement agencies engaged in patrol and related functions and (2) state bureaus of investigation.
- Today, there are approximately 18,000 police agencies, each with an organizational structure divided into a number of operations and support functions. A rank hierarchy will also exist for dividing up the workload and assigning responsibility.
- INTERPOL is the oldest, the best-known, and probably the only truly international crime-fighting organization for crimes committed on an international scale; its agents do not patrol the globe, nor do they make arrests or engage in shoot-outs. They are basically intelligence gatherers who have helped many nations work together in attacking international crime since 1923.
- There are a number of common elements—often termed “KSAs” (for knowledge, skills, and abilities)—of employment in many federal, state, and local law enforcement positions; many such positions (particularly at the federal level) now involve the enforcement of immigration laws.

- The field of private policing or security is much larger than public policing; it is divided into in-house security services, called *proprietary services*, and *contract services*, where outside firms or individuals are hired by the individual or company to provide security services for a fee. Private security officers are not bound by court decisions that govern the public police, and generally, they possess the same authority to make an arrest as a private citizen. There have been long-standing concerns with its personnel and hiring-and-training practices, but the field is becoming more professional overall.

KEY TERMS

Chain of command (p. 117)	Organization (p. 101)
Community era (p. 105)	Organizational structure or chart (p. 115)
Constable (p. 102)	Political era (p. 103)
Contract services (p. 121)	Private police/security officers (p. 121)
Coroner (p. 102)	Proprietary services (p. 121)
County sheriff's office (p. 115)	Reform era (p. 104)
Federal law enforcement agencies (p. 106)	Sheriff (p. 102)
INTERPOL (p. 112)	Special-purpose state agencies (p. 114)
Justice of the peace (JP) (p. 102)	State bureau of investigation (SBI) (p. 113)
Municipal police department (p. 114)	State police (p. 113)

REVIEW QUESTIONS

1. What were the four major police-related offices and their functions during the early English and colonial periods?
2. What are the three eras of local policing, what were August Vollmer's contributions to policing's reform era, and what primary problems of the two initial eras led to the development of the current community era?
3. What are the major agencies within the Department of Homeland Security and the Department of Justice, and what are their primary functions?
4. What general qualifications, job requirements, and benefits are involved in careers in federal law enforcement agencies?
5. How would you describe the primary differences between federal and state law enforcement agencies?
6. What functions do the Central Intelligence Agency and the Internal Revenue Service perform?
7. How does INTERPOL function, and what are some of its primary contributions to crime fighting?
8. What are some of the differences between municipal police agencies and county sheriff's departments?
9. Using a simple organizational structure that you have drawn, how would you describe the major functions of a local (i.e., municipal or county) police agency?
10. Why were the private police organizations developed, and what are their contemporary purposes and issues?

LEARN BY DOING

1. Assume you are part of a group that is debating the feasibility of a single, national police force in the United States, such as those found in many countries around the world. All federal, state, county, and municipal police organizations would be abolished and absorbed into this single centralized agency, with one governing board, one set of laws to enforce and agency policies to uphold, and standardized training and pay/benefits. Develop arguments both *for* and *against* this proposed policing model, perhaps including the history of policing, all possible positive and negative consequences that might occur from this single entity, its political pitfalls and favor with the general public, and whether or not you would support this proposal.
2. Do an internet search to determine which of the following four police-related offices are still authorized and used in the United States and in your state: sheriff, constable, justice of the peace, and coroner.
3. You have been assigned to describe your state's special-purpose law enforcement agencies for a class presentation. Prepare a lecture outline covering those agencies and the services they provide.



Getty Images/ftwitty



POLICE AT WORK

Patrolling and Investigating

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 6.1** Explain the “hurdle process” that exists to recruit, hire, and train citizens to become police officers.
- 6.2** Explain what is meant by having the “right stuff”: a working personality and the roles, styles, and basic tasks of policing.
- 6.3** Identify potential stressors and perils in policing.
- 6.4** Describe discretionary use of police authority, to include how and why it is allowed to function and some of its advantages and disadvantages.
- 6.5** Explain the philosophy and application of community policing and problem-solving.
- 6.6** Describe forensics and criminalistics, the investigative process, the work of detectives, and how crime scenes and criminal interrogations should be handled.

ASSESS YOUR AWARENESS

Test your current knowledge of police patrol and investigations by responding to the following seven true–false items; check your answers after reading this chapter.

- 1. Normally, there are only three types of tests one has to pass in order to become a police officer: a background check, a criminal record check, and a polygraph exam.
- 2. Studies show a police officer who has a college degree is no better in terms of overall performance than one who is without a degree.
- 3. As typically shown in movie and television portrayals, detective work is primarily action packed and involves a successful search for offenders.
- 4. The four basic tasks of policing that involve the public are patrolling, tracking, arresting, and appearing in court.
- 5. DNA is the most sophisticated and reliable type of physical evidence.
- 6. Police officers, being governed by laws and procedure manuals, actually have very little discretion in how they perform their jobs.

Answers can be found on page 401.

As will be seen in this chapter, given enough solid and accurate physical, eyewitness, or other types of evidence (and, often, some luck), law enforcement’s application of investigative resources can often result in the successful solving of a crime—even those crimes that were committed decades earlier. Indeed, it is often said there is no such thing as a “perfect crime.”

But when a major case goes unsolved, we simply cannot rest until we reach closure. Such has been the case in the matter of the mysterious “D.B. Cooper” who, 5 decades ago, famously hijacked a jetliner, parachuted out between Portland, Oregon, and Seattle, Washington, and disappeared with the equivalent of \$1.2 million (in today’s dollars) in ransom money.

Cooper’s investigation has yet to establish his true identity, occupation, or ultimate fate. The case is still brought to the public’s attention with some frequency as self-described experts, private sleuths, retired law enforcement agents and scientists, and crime historians continue to look for evidence and offer their theories—and with good reason, as the matter was recently termed by *The Washington Post* as “one of the longest and most exhaustive investigations” in FBI history (the FBI announced in 2016 it is no longer actively investigating the case).¹ It “remains

the only unsolved skyjacking in the United States.”² There is even a website dedicated to “the hunt for D.B. Cooper.”³

As you read this chapter, consider whether you believe you possess, or will be able to acquire, the essential knowledge, skills, and abilities needed in order to become a successful police officer or investigator.

INTRODUCTION

How do I become a police officer? What would I do as one? Could I be a detective? A criminal profiler? How do I qualify to work in forensics? Do police have to arrest everyone they see breaking the law?

These are all legitimate, often-heard questions as posed by university students. Unfortunately, owing in large measure to Hollywood’s portrayals of police work and investigations, there are many misperceptions about the field. First, the odds of one’s becoming a criminal profiler are virtually nil—as are the odds of some federal agent academy trainee being brought out to help investigate a serial killer case (as was the plot in the movie *The Silence of the Lambs*). Second, one who wishes to work in a forensics lab must have a background in chemistry, biology, or a related natural science field (e.g., biochemistry or microbiology). Finally, to become a detective, one must typically begin as a regular officer (see what is often termed the “**hurdle process**” for getting hired); then, with years of training, experience, and often testing or at least an oral examination, one might be deemed worthy of being an investigator. This chapter hopes to remedy those misperceptions, at least in part, by looking at some of the primary roles and functions of the individuals who work in police organizations.

We begin with an overview of the kinds of tests used and attributes sought in the recruiting, hiring, and training of future police officers. Following are discussions of the benefits of higher education for police and the subculture of the “cop’s world”—the roles, styles, and tasks of the police; dangers and stressors found in the policing occupation, discretionary use of authority by police, and community policing and problem-solving. Then we examine those who investigate crimes, the detectives; included is a review of the investigative process, crime scene handling, attributes and techniques of detectives, and how DNA analyses are performed (including their use in handling cold cases).

FROM CITIZEN TO PATROL OFFICER

The idea of a police subculture was first proposed by William Westley in his 1950 study of the Gary (Indiana) Police Department, where he found, among many other things, a high degree of secrecy and violence.⁴ The police develop traditions, skills, and attitudes that are unique to their occupation because of their duties and responsibilities. In this section, we consider how citizens are brought into, and socialized within, the police world.

Recruiting the Best

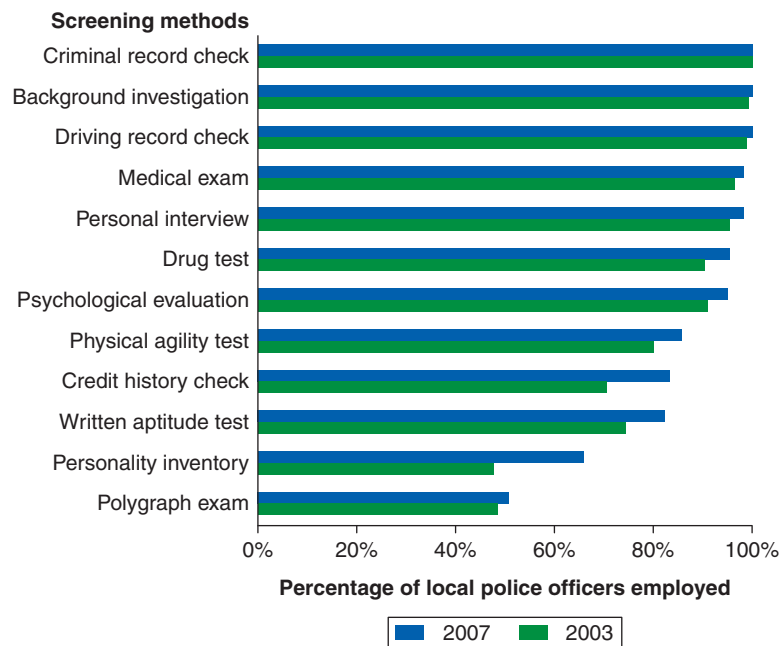
Recruiting an adequate pool of applicants is an extremely important facet of the police hiring process. August Vollmer, the renowned Berkeley, California, police innovator and administrator, said law enforcement candidates should

have the wisdom of Solomon, the courage of David, the patience of Job and leadership of Moses, the kindness of the Good Samaritan, the diplomacy of Lincoln, the tolerance of the Carpenter of Nazareth, and, finally, an intimate knowledge of every branch of the natural, biological and social sciences.⁵

Police officers are solitary workers, spending most of their time on the job unsupervised. At all times, they must be able to make sound decisions and adjust quickly to changing situations during periods that are unpredictable and unstable, chaotic, or high stress—all the while acting ethically and in keeping with the U.S. Constitution, their state statutes, and their agency’s policy and procedures manual. For these reasons, police agencies must attempt to attract the best individuals possible.

Figure 6.1 shows the general kinds of screening and testing methods used with new police recruits in the United States. Even after a person meets the minimum qualifications for being a police officer (age, education, no disqualifying criminal record) and is recruited into the testing process, much work and testing remain before they are ready to be sent to the streets as a police officer. This so-called hurdle process is shown in Figure 6.2. Note not all types of tests shown in the figure are employed by all of the 18,000 federal, state, county, and municipal law enforcement agencies in America, nor are these tests necessarily given in the sequence shown. Furthermore, this gamut of testing can easily require several months to complete, depending on the number and types of tests used and the ease of scheduling and performing them.

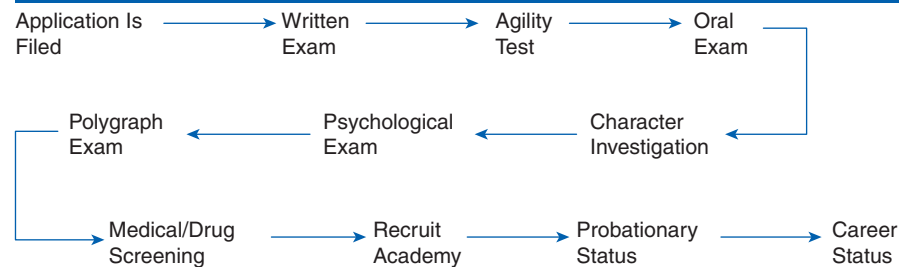
FIGURE 6.1 ■ Local Police Officers' Selected Screening Methods in the Hiring Process



Source: Brian A. Reaves, *Hiring and Retention of State and Local Law Enforcement Officers* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, October 2012), p. 14, <https://www.bjs.gov/content/pub/pdf/hrslleo08st.pdf>.

Note: Most current data available.

FIGURE 6.2 ■ Major Elements of the Police Hiring Process



Does a College Degree Matter?

To interact with an educated public, enforce the rule of law, investigate crimes, testify in court, write cogent and accurate reports, and perform the myriad other duties for which we call upon the police, one would assume all officers must obtain a 2- or 4-year college degree prior to assuming the role. Such,

however, is not even close to being the case. Indeed, only 15% of all police agencies have some college requirement, with 1% requiring a 4-year degree for new officers, and fewer than one fourth (23%) requiring a 2-year degree.⁶



Many studies have indicated that college-educated persons make better officers, yet relatively few agencies require a college degree for hiring.

©iStockphoto.com/monkeybusinessimages

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals, recognizing the need for **higher education** (i.e., education beyond high school, at a college or university in particular) among police officers, recommended that all police officers have a 4-year college education by 1982.⁷ Indeed, from 1967 to 1986, every national commission that studied crime, violence, and police in America maintained that a college education could help the police do their jobs better.⁸ Obviously, the recommendations of those commissions have not been followed. Reasons commonly given for not having a degree requirement include that it would reduce the recruitment pool in general, result in fewer people of color being able to apply, and that most police skills can only be learned through on-the-job training and experience.⁹

Abundant empirical evidence indicates that college-educated police officers are better officers. For example, compared to non-college-educated officers, college-educated officers have significantly fewer founded citizen complaints¹⁰; have better peer relationships¹¹; are likelier to take a leadership role in the organization¹²; tend to be more flexible¹³; are less dogmatic and less authoritarian¹⁴; take fewer leave days, receive fewer injuries, have less injury time, have lower rates of absenteeism, use fewer sick days, and are involved in fewer traffic accidents¹⁵; have greater ability to analyze situations and make judicious decisions; and have a more desirable system of personal values.¹⁶ Furthermore, college graduates are accused of negligent use of a firearm significantly less often than are officers who lack a college degree.¹⁷

Finally, Norm Stamper, former police chief in Seattle, Washington, observed not only do the degree, knowledge, and college credits matter, but so does

getting up in the morning for classes or attending at night after work, reading dense texts, writing term papers, questioning professors, associating with people and ideas that force you to think, [and] taking midterms and finals. The politics of higher education, the discipline of learning *how* to learn—that was the most useful thing about higher ed.¹⁸

Yet even though there are many online programs available and departments offering financial assistance and pay bonuses toward higher education, many officers obviously believe a college degree is not an overall necessary component for a police officer's educational background—and thus not worth the time and effort involved toward obtaining one.¹⁹

Recruit Training

Once hired into an agency, police recruits are taught a variety of subjects in **academy training** (see Table 6.1). Never has basic recruit training been more important than it is today, with the average length of such training consisting of 833 hours (or about 21 weeks) of instruction (note also that most academies provide in-service and advanced training sessions as well).

A federal survey of training academies reported in mid-2021 that 81% of beginning recruits were male; about two thirds were white (14% were Black); that nearly all recruits received reality-based (role-playing) scenario training, as well as training in specialty nighttime firearms conditions and

TABLE 6.1 ■ Major Subject Areas Included in Basic Training Programs in State and Local Law Enforcement Training Academies

Training Area	Percentage of Academies With Training	Average Length of Instruction (Hours)
Operations		
Report writing	99.5	24
Patrol procedures	98	52
Investigations	98	36
Traffic accident investigations	96.6	26
Emergency vehicle operations	97	40
Basic first aid/CPR	96.8	24
Computers/information systems	62.9	12
Weapons/defensive tactics/use of force		
Defensive tactics	99.5	61
Firearms skills	99.3	73
Deescalation/verbal judo	88.3	18
Less-lethal weapons	92.3	20
Self-improvement		
Ethics and integrity	99.3	12
Health and fitness	98	50
Communications	89.1	16
Professionalism	87.1	12
Stress prevention/management	87.5	9
Legal education		
Criminal/constitutional law	99.3	51
Traffic law	97.2	26
Juvenile justice law/procedures	97.1	11

Source: U.S. Department of Justice, Bureau of Justice Statistics, *State and Local Law Enforcement Training Academies, 2018* (July 2021), p. 10, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/slleta18st.pdf>.

simulated stressful conditions; and that while about a third (32.5%) of all academies were run by 2-year colleges, many were operated by police agencies themselves (19.2%), sheriff's offices (11%), a multi-agency unit (7.6%), or by a state agency or technical school (16.3%).²⁰

Table 6.1 displays the predominant subjects included in academy training of new officers and the average length of time devoted to each. The table shows that large blocks of time are devoted to defensive tactics/weapons skills, criminal/constitutional law, patrol procedures, and health and fitness.



Police recruits undergo training in a variety of subjects during their many weeks in the academy.

AP Photo/Steve Ruark

Field Training Officer

Once the recruits leave the academy, they are not merely thrown to the streets to fend for themselves in terms of upholding the law and maintaining order. Another important part of this acquisition process involves being assigned to a veteran officer for initial field instruction and observation. This veteran is sometimes called a **field training officer (FTO)**. This training program provides recruits with an opportunity to make the transition from the academy to the streets under the protective arm of a veteran officer. Recruits are on probationary status, typically ranging from 6 months to 1 year; their employment may be terminated immediately if their overall performance is unsatisfactory during that period.

Most FTO programs consist of three identifiable phases:

1. Introductory phase (the recruit learns agency policies and local laws)
2. Training and evaluation phase (the recruit is introduced to more complicated tasks that patrol officers confront)
3. Final phase (the FTO acts strictly as an observer and evaluator while the recruit performs all the functions of a patrol officer)²¹

The length of time a rookie officer is assigned to an FTO will vary. A formal FTO program might require close supervision for a range of 1 to 12 weeks.

Most police officers also receive in-service training throughout their careers because their states require a minimum number of hours of such training. News items, court decisions, and other relevant

information can also be covered at roll call before the beginning of each shift. Short courses ranging from a few hours to several weeks are available for in-service officers through several means such as videos and nationally televised training programs.

HAVING THE “RIGHT STUFF”: DEFINING THE ROLE

In addition to possessing the “bare essentials” mentioned earlier—a high degree of ethics/integrity (determined via polygraph, record check, and other means), knowledge of applicable laws and procedures (obtained at the basic academy), communication skills, physical fitness, and so on—who are the police, and what are they supposed to do? Although a seemingly straightforward question, the **policing role** is far more complex than merely saying they “enforce the law” or “serve and protect.”

One of the greatest obstacles to understanding the American police is the crime-fighter image. Because of film and media portrayals, many people believe the role of the police is confined to the apprehension of criminals. However, a survey by *The New York Times* of calls for service data in three jurisdictions found that police spent roughly one third of their time responding to noncriminal calls, one fifth on traffic, one fifth on minor or property crimes, one fifth on proactive patrolling, and only 4% working violent crimes.²² And, as Jerome Skolnick and David Bayley point out, the crimes that terrify Americans the most—robbery, rape, burglary, and homicide—are rarely encountered by police on patrol. In their words,

Only “Dirty Harry” has his lunch disturbed by a bank robbery in progress. Patrol officers individually make few important arrests. The “good collar” is a rare event. Cops spend most of their time passively patrolling and providing emergency services.²³

Also, many individuals enter police work expecting it to be exciting and rewarding, as depicted on television and in the movies. Later, they discover much of their time is spent with boring, mundane, and trivial tasks—and paperwork is seldom stimulating.



As opposed to Hollywood’s portrayals, very little police work is action packed. Here, Washington, DC, police cite people who are talking on cell phones while driving.

Mark Wilson/Getty Images News/Getty Images

A Working Personality

Since the publication of Westley’s examination of police subculture in 1950, the notion of a police personality has become a popular area of study. In 1966, Jerome Skolnick described what he termed the “working personality” of the police.²⁴ He determined the police role contained two important variables: danger and authority. Danger is a constant feature of police work. Police officers, constantly facing potential violence, are warned at the academy to be cautious. They are told many war stories of officers shot and killed at domestic disturbances or traffic stops. Consequently, Skolnick said, they develop “perceptual shorthand” that they use to identify certain kinds of people as “symbolic assailants”—individuals whom the officer has come to recognize as potentially violent based on their gestures, language, and attire.

Three Distinctive Styles of Policing

James Q. Wilson also attempted to clarify what it is the police are supposed to do; Wilson maintained there are three distinctive **policing styles**:²⁵

- The *watchman* style involves the officer as a “neighbor.” Here, officers act as if order maintenance (rather than law enforcement) is their primary function. The emphasis is on using the law as a means of maintaining order rather than regulating conduct through arrests. Police ignore many common minor violations, such as traffic and juvenile offenses.

These violations and so-called victimless crimes, such as gambling and prostitution, are tolerated; they will often be handled informally. Thus, the individual officer has wide latitude concerning whether to enforce the letter or the spirit of the law; the emphasis is on using the law to give people what they “deserve.”

- The *legalistic* style casts the officer as a “soldier.” This style takes a much harsher view of law violations. Police officers issue large numbers of traffic citations, detain a high volume of juvenile offenders, and act vigorously against illicit activities. Large numbers of other kinds of arrests occur as well. Chief administrators want high arrest and ticketing rates not only because violators should be punished but also because it reduces the opportunity for their officers to engage in corrupt behavior. This style of policing assumes the purpose of the law is to punish.
- The *service* style views the officer as a “teacher.” This style falls in between the watchman and legalistic styles. The police take seriously all requests for either law enforcement or order maintenance (unlike in the watchman-style department) but are less likely to respond by making an arrest or otherwise imposing formal sanctions. Police officers see their primary responsibility as protecting public order against the minor and occasional threats posed by unruly teenagers and “outsiders” (transient persons, out-of-town visitors). The citizenry expects its service-style officers to display the same qualities as its department store salespeople: They should be courteous, neat, and deferential. The police will frequently use informal sanctions instead of making arrests.

Four Basic Tasks

Patrol officers may be said to perform four basic **tasks of policing**:

1. *Enforce the laws.* Although this is a primary function of the police, as we saw earlier, they actually devote a very small portion of their time to “chasing bad guys.”
2. *Perform welfare tasks.* Throughout history, the police have probably done much more of this type of work than the public (or the police themselves) realize; the following are some of them:
 - Delivering “check-the-welfare of” kinds of calls, where someone has not been seen or heard from for some time and may be deceased, ill, missing, or in distress
 - Responding to “be on the lookout” (BOLO) calls, where someone has wandered away from a nursing home or an assisted-living home, is a juvenile runaway, and so forth
 - Delivering death notifications/messages
 - Delivering blood to hospitals (particularly in more rural areas where blood banks are not available)
 - Assisting firefighters and animal control units
 - Reporting burned-out streetlights or damaged traffic signs
 - Performing all manner of errands simply because they are available—locking and unlocking municipal parking lots, collecting receipts from municipal entities such as golf courses, delivering agendas to city/county commissioners, and so forth
3. *Prevent crime.* This function of police involves engaging in random patrol and providing the public with crime prevention information.
4. *Protect the innocent.* By investigating crimes, police are systematically removing innocent people from consideration as crime suspects.

Perils of Policing

Although the number will fluctuate, each year since 1990, there have been 150 to 250 line-of-duty deaths of police officers in the United States,²⁶ while another 50,000 to 60,000 officers will be assaulted (15,000–20,000 resulting in injuries).²⁷ The year 2021 will go down in the annals of law enforcement as

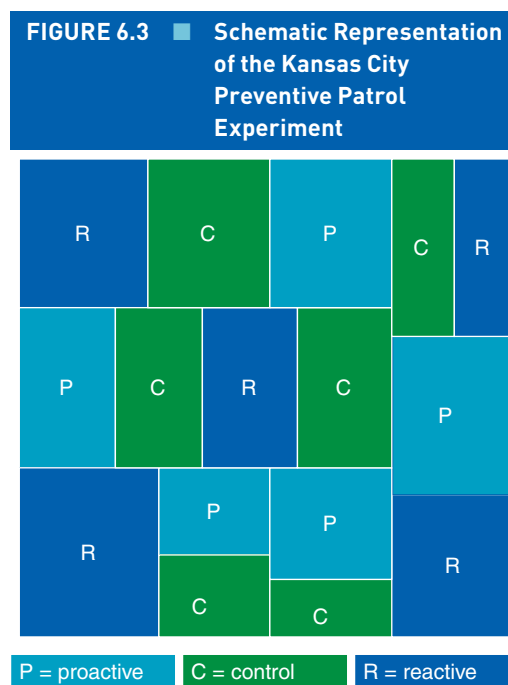
one of its deadliest years, however, as there were 535 officers killed in the line of duty—with at least 371 of those deaths being related to COVID-19.²⁸ Officer demographics and circumstances will also vary, but in a recent year, the average slain officer was 39 years of age, had worked in law enforcement about 12 years, was killed by a handgun, was working in patrol, and was either killed in ambush or arrest situations.²⁹

Officers seldom know for certain whether a citizen they are about to confront is armed, high on drugs or alcohol, or perhaps even planning to die at the hands of the police using a technique known as “suicide by cop.” This danger is heightened during the hours of darkness, when patrol officers encounter burglars looking to invade homes and businesses, people who are intoxicated from a night of partying, and so on.

A Study of Patrol Effectiveness

The best-known study of patrol effectiveness, the **Kansas City Preventive Patrol Experiment**, was conducted in Kansas City, Missouri, in 1973. Researchers—wanting to know if random patrol had any significant effect on crime, police response rates to crime, or citizen fear of crime—divided the city into 15 beats, which were then categorized into five groups of three matched beats each. Each group consisted of neighborhoods that were similar in terms of population, crime characteristics, and calls for police services. In one beat area, there was no preventive patrol (police responded only to calls for service); another beat area had increased patrol activity (2 or 3 times the usual amount of patrolling); and in the third beat, there was the usual level of patrol service. Citizens were interviewed and crime rates were measured during the year the experiment was conducted.

The study found the deterrent effect of policing was not reduced by the elimination of routine patrolling; nor were citizens’ fear of crime, their attitudes toward the police, or the ability of the police to respond to calls reduced. The Kansas City Preventive Patrol Experiment (depicted in Figure 6.3) indicated the traditional assumption of “Give me more cars and more money, and we’ll get there faster and fight crime” was probably not a viable argument.³⁰



Source: George L. Kelling, Tony Pate, Duane Dieckman, and Charles E. Brown, *The Kansas City Preventive Patrol Experiment: A Summary Report* (Washington, DC: Police Foundation, 1974). Reprinted with permission of the Police Foundation.

Going Global 6.1

Dubai Builds a Patrol Vehicle for the Future

Although it sounds more like something out of a *Star Trek* episode, police in Dubai (United Arab Emirates) are currently experimenting with the use of hoverbikes as an additional means of patrol. Having a single seat, these flying vehicles operate like drones, relying on four propellers for flight. They can fly about 16 feet above the ground and reach speeds of 40 to 60 miles per hour. They are also capable of vertical takeoff and landing, can carry up to 600 pounds, and can stay airborne for about 25 minutes on a fully charged battery. In addition, the hoverbike can operate in “drone mode,” without a rider, being remotely piloted and staying airborne for up to about 40 minutes. Advantages of these hoverbikes are clear: Where police vehicles must negotiate traffic and other road conditions while enroute to emergencies, hoverbikes can simply fly over them. They also allow officers to get the “bird’s-eye view” for purposes of crowd management and search-and-rescue operations. At present, however, the expense, limited range, relatively short battery life, and other limitations of hoverbikes make them impractical for most police departments in the United States. But if this technology improves and costs decline, police agencies could soon be doing much of their work from on high.³¹

STRESSORS IN POLICE WORK

There is an aspect of police work that officers would prefer to ignore but must be acknowledged: the **stress** induced by the job. Indeed, Sir W. S. Gilbert observed, “When constabulary duty’s to be done, the policeman’s lot is not a happy one.”³² Therefore, those persons either working in the field or contemplating doing so must know of the challenges of stress and how to cope with them. The job of policing has never been easy, as many of the people they confront are armed and dangerous; but the dangers of the job have increased as a result of today’s drug problems, gangs, mass shootings, critical incidents, threats of terrorism, weaponry, and other issues, as well as the “fishbowl” effect of the work, given the close scrutiny, videotaping, and calls for accountability of today’s police.

Sources of Stress

Stress can come from a number of directions, so police officers can experience discomfort and distress as a result of a wide range of problems and situations. The four general sources of stress are (1) organizational and administrative practices, (2) the criminal justice system, (3) the public, and (4) stress intrinsic to police work itself.

Organizational and Administrative Practices

A primary source of stress is the police organization itself. Police departments typically are highly bureaucratic and possibly authoritarian in nature, which creates stress for individual officers in at least two ways. First, police departments follow strict policies and procedures, general orders, and rules and regulations that are dictated by top management. Street officers and first-line supervisors seldom have direct input into their formulation, resulting in officers feeling powerless and alienated about the decisions that directly affect their jobs. Second, these rules dictate how officers specifically perform many of their duties and responsibilities. They are created to provide officers with guidance and direction. Police officers, however, sometimes view these rules as mechanisms used by management to restrict their freedom and discretion or to justify punishing them when they make incorrect decisions or errors.

Police officers who are women or people of color also face unique problems. Because policing has traditionally been a male- and white-dominated occupation, in many agencies underrepresented officers do not always have the same standing or career options as their counterparts. In addition, female officers might confront sexual harassment,³³ whereas officers who are persons of color might feel they are ostracized by people of their own race for being “traitors” against them and their neighborhoods.



By its nature, policing carries a high potential for danger. This funeral procession escorts an officer who was shot dead while answering a report of a traffic accident.

Irfan Khan/Los Angeles Times/Getty Images

The Criminal Justice System

Each component of the criminal justice system affects the other components. For example, judges have openly displayed hostile attitudes toward the police, or prosecutors have not displayed proper respect to officers, arbitrarily dismissing cases, having them appear in court during regularly scheduled days off, and advocating rulings restricting police procedures. Another example occurs when parole officers and probation officers do an inadequate job of supervising parolees, which results in their being involved in an inordinate amount of crime. The courts have the most direct impact on police officers and probably are the greatest source of stress from the criminal justice system.

The Public

When police officers perform community services, they also become involved in conflicts or negative situations. They arrest citizens, they write tickets, and they give citizens orders when intervening in domestic violence or disorder situations. Often, to resolve problems, they make half of the participants happy but the other half unhappy. The problem is police officers develop unrealistic or inaccurate ideas about citizens as a result of their negative encounters. Officers must keep their relationship with citizens in proper perspective. This is achieved by open, straightforward discussions of public attitudes and encounters with citizens. It also means managers must emphasize the importance of good relations between the police and the public and of the majority of citizens supporting and respecting the police.

Stressors Intrinsic to Police Work

Police work is fraught with situations that pose physical danger to officers. Domestic violence, felonies in progress, and fight calls often require officers to physically confront suspects. It would seem the work itself, since it includes dealing with dangerous police activities and people, would be the most stressful part of police work. Traumatic incidents can require long-term follow-up support for law enforcement personnel.

Coping With Stress

If officers do not relieve the pressure of the job, they eventually may suffer heart attacks, nervous breakdowns, back problems, headaches, psychosomatic illnesses, or alcoholism. They may also experience excessive weight gain or loss; combativeness or irritability; excessive use of sick leave; excessive use of

alcohol, tobacco, or drugs; marital or family disorders; inability to complete an assignment; loss of interest in work, hobbies, and people in general; more than the usual number of “accidents,” including vehicular and other types; and shooting incidents. It is imperative that officers learn to manage their stress before it causes deep physical and/or emotional harm. One means is to engage in hobbies or activities that provide legitimate means of relaxing and venting. Exercise, proper nutrition, and positive lifestyle choices (such as not smoking and using alcohol only in moderation) are also essential for good health.

USE OF DISCRETION

An earlier chapter discussed how discretionary use of authority permeates the entire U.S. criminal justice system; here, we focus on how discretion is employed in policing. The power to use discretion in performing one’s role is at the very core of policing. However, as is discussed in this section, this power can be controversial—and used for both good and bad.

The Myth of Full Enforcement

The law (codes, statutes, ordinances) is written in black and white; however, the manner in which most laws are enforced by the police can be said to be colored gray (exceptions being, for example, where a state’s laws or agency’s policies regarding such offenses as domestic violence and driving under the influence allow officers little discretion but to arrest).

Consider this scenario: The municipal police chief or county sheriff is asked during a civic club luncheon speech which laws are and are not enforced by their agency. The official response will inevitably be that *all* of the laws are enforced equally, all of the time. Yet the chief or sheriff knows that full enforcement of the laws is a myth—that there are neither the resources nor the desire to enforce them all, nor are all laws enforced impartially. There are legal concerns as well. For example, releasing some offenders (to get information about other crimes, because of a good excuse, etc.) cannot be the official policy of the agency (and letting an offender go is a form of discretion as well); however, the chief or sheriff cannot broadcast that fact to the public. Indeed, it has been stated “the single most astonishing fact of police behavior is the extent to which police do *not* enforce the law when they have every legal right to do so.”³⁴

Attempts to Define Discretion

The way police make arrest decisions is largely unknown (see possible determining factors, described in the next section). What *is* known, however, is that when police observe something of a suspicious or an illegal nature, two important decisions must be made: (1) whether to intervene in the situation and (2) how to intervene. The kinds, number, and possible combinations of interventions are virtually limitless. What kinds of decisions are available for an officer who makes a routine traffic stop? David Bayley and Egon Bittner observed long ago that officers have as many as 10 actions to select from at the initial stop (e.g., order the driver out of the car), 7 strategies appropriate during the stop (such as a roadside sobriety test), and 11 exit strategies (including releasing the driver with a warning), representing a total of 770 different combinations of actions that might be taken!³⁵

Criminal law has two sides: the formality and the reality. The formality is found in the statute books and opinions of appellate courts. The reality is found in the practices of enforcement officers. In some circumstances, the choice of action to be taken is relatively easy, such as arresting a bank robbery suspect. In other situations, such as quelling a dispute between neighbors or determining how much party noise is too much, the choice is more difficult.³⁶ One person who commits a robbery is not the same as another person who commits a robbery. Our system also takes into account why and how a person committed a crime (their intent, or *mens rea*, discussed in earlier chapters). The most important decisions take place on the streets, day or night, generally without the opportunity for the officer to consult with others or to carefully consider all the facts.

Determinants of Discretionary Actions

Kenneth Culp Davis, an authority on police discretion, writes, “The police are among the most important policymakers of our entire society. And they make far more discretionary determinations in individual cases than does any other class of administrators; I know of no close second.”³⁷

What determines whether the officer will take a stern approach (enforcing the letter of the law with an arrest) or will be lenient (issuing a verbal warning or some other outcome short of arrest)? Several variables enter into the officer’s decision:

1. The *law* is indeed a factor. For example, many state statutes and local ordinances now mandate that the police arrest for certain suspected offenses, such as driving under the influence or domestic violence.
2. The *officer’s attitude* can also be a factor. First, some officers are more willing to empathize with offenders who feel they deserve a break than others. Furthermore, police, being human, can bring to work either a happy or an unhappy disposition. Personal viewpoints can also play a role, such as, for example, when the officer is fed up with juvenile crimes that have been occurring of late and thus will not give any leniency to youths they encounter. Also, as Carl Klockars and Stephen Mastrofski observed, although violators frequently offer what they feel are very good reasons for the officer to overlook their offense, “every police officer knows that, if doing so will allow them to escape punishment, most people are prepared to lie through their teeth.”³⁸
3. Another major consideration in the officer’s choice among options is the *citizen’s attitude*. If the offender is rude and condescending, denies having done anything wrong, or uses some of the standard clichés that are almost guaranteed to rankle the officer—such as “You don’t know who I am” (someone who is obviously very important in the community), “I’ll have your job,” “I know the chief of police,” or “I’m a taxpayer, and I pay your salary”—the probable outcome is obvious. By contrast, the person who is honest with the officer, avoids attempts at intimidation and sarcasm, and does not try to “beat the rap” may fare better.

In addition, other factors that an officer may take into account when deciding whether or not to arrest might include the following: injury to and preference of the victim; prior criminal record of the offender; amount and strength of evidence; peer and agency pressure regarding certain kinds of crimes; media coverage of this and other related crimes; and availability and credibility of witnesses. The officer’s specific assignment may also come into play. For example, homicide investigators would care little about a driver’s tendency to disobey traffic laws, whereas one who is an assigned and dedicated traffic officer will likely treat such offenses much more seriously.

Pros and Cons of Discretion

Having discretionary authority carries several advantages for the police officer: First, because the law cannot (and should not) cover every sort of situation the officer encounters, discretion allows the officer to have the flexibility to treat different situations in accordance with humanitarian and practical goals. For example, assume an officer pulls over a speeding motorist, only to learn that the car is en route to the hospital with a woman who is about to deliver a baby. While the agitated driver is endangering everyone in the vehicle as well as other motorists on the roadway, discretion allows the officer to be compassionate and empathetic, giving the car a safe escort to the hospital rather than issuing a citation for speeding. In short, discretionary use of authority allows the police to employ a philosophy of “justice tempered with mercy.”

One disadvantage of discretionary authority is that those officers who are the least trained and experienced have the greatest amount of discretion to exercise. In other words, as the rank of the officer *increases*, the amount of discretion they can employ typically *decreases*. The patrol officer or deputy being loosely supervised on the streets makes many discretionary decisions about whether or not to arrest, search, frisk, and so forth. Conversely, the chief of police or sheriff will be highly constrained

by department policies and procedures, union agreements, affirmative action laws, and/or governing board guidelines and policies. Another disadvantage is that allowing police to exercise such discretion belies their need to appear impartial—treating people differently for committing essentially the same offense. Critics of discretion also argue that such wide latitude in decision-making may serve as a breeding ground for police corruption—for example, an officer may be offered a bribe to overlook an offense.



As part of their community policing and problem-solving efforts, many agencies use bicycle patrols to focus on crime prevention and greater interaction with the community. But community policing, as discussed in the Community Policing and Problem-Solving section, involves much more than merely having bike patrols.

Robert Alexander/Archive Photos/Getty Images

COMMUNITY POLICING AND PROBLEM-SOLVING

We previously discussed the three eras of policing, including today’s “community era.” The following is a brief description of policing in terms of how it moved from the political and reform eras—both of which experienced problems in terms of recognizing and working with the community. The seeds of **community policing and problem-solving** were sown in London in 1829 when Sir Robert Peel offered “the police are the public and...the public are the police” and that, by establishing patrol beats, officers could get to know citizens and thus be better able to gather information about neighborhood crime and disorder.

As you saw in an earlier chapter, however, in the United States that close police–public association over time often led to powerful political influences and corruption in terms of who was hired, who was promoted, and who could bring elected officials the most votes. This led to the onset of the reform era in the 1930s. Reforms included the removal of police from the influence of the community and politics through the creation of civil service systems. The community era of policing recognized that the public has a vested interest in addressing—as well as vital information concerning—neighborhood crime and disorder, and thus a return to Peel’s principles was needed, and the two entities should work hand in glove to resolve problems.

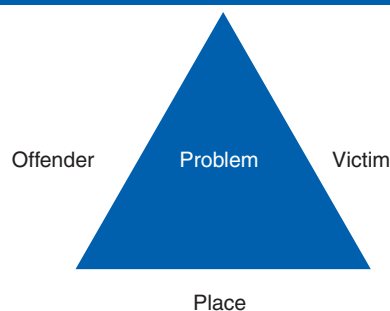
Problem-oriented policing, which began to develop in the mid-1980s, was grounded in principles different from, but complementary to, those of community-oriented policing. Problem-oriented policing is a strategy that puts the community policing philosophy into practice. It advocates that police examine the underlying causes of recurring incidents of crime and disorder. The problem-solving process helps officers identify problems, analyze them completely, develop response strategies, and assess the results. Police must be equipped to define more clearly and to understand more fully the problems

they are expected to handle. They must recognize the relationships between and among incidents—for example, incidents involving the same behavior, the same address, or the same people. The police must therefore develop a commitment to analyzing problems—gathering information from police files, the minds of experienced officers, other agencies of government, and private sources as well. It can also require conducting house-to-house surveys and talking with victims, complainants, and offenders. It includes an uninhibited search for the most effective response to each problem, looking beyond just the criminal justice system to a wide range of alternatives; in sum, police must try to design a customized response that holds the greatest potential for dealing effectively with a specific problem in a specific place under specific conditions.

Thousands of police agencies have thus broken away from their reactive, incident-driven methods that characterized the reform era—where police would race from call to call, take an offense report, and leave the scene without seeking any resolution to problems or achieving any long-term benefits. Indeed, three fourths of all police training academies now include training in community policing and problem-solving.³⁹ This change in philosophy and strategies goes far beyond merely creating a “crime prevention specialist” position, a “community relations unit,” a foot or bicycle patrol, or a neighborhood mini-station.

Finally, what every criminal justice employee knows is that three elements must exist in order for a crime to occur: an offender, a victim, and a location, as shown in Figure 6.4. The problem analysis triangle helps officers visualize the problem and understand the relationships among these three elements. Simply put, if at least one of the three elements of the triangle is missing, there will be no crime. Part of the analysis phase involves finding out as much as possible about the victims, offenders, and locations where problems exist in order to understand what is prompting the problem and what can be done about it.

FIGURE 6.4 ■ Problem Analysis Triangle



Source: *Theory for Practice in Situational Crime Prevention*, edited by Martha J. Smith and Derek B. Cornish. Copyright © 2003 by Lynne Rienner Publishers. Used with permission of the publisher.

THE WORK OF FORENSICS AND DETECTIVES

As indicated earlier, agency policies concerning time on the job, qualifications (knowledge, skills, abilities), and testing/interviewing will vary from agency to agency, but at some point in time, the police officer may wish to be laterally assigned (or promoted) to a detective assignment. Aside from the status a detective assignment might bring, it also often carries a raise in salary, a civilian clothing allowance, on-call pay, day-shift work, the ability to generally manage one's own time and activities (as opposed to being closely supervised), and other perquisites. But not everyone is destined to be good in this role because, as will be seen in the next section, the successful investigator must possess several personal attributes.

The challenges involved with investigating crimes may well be characterized by a quote from Ludwig Wittgenstein: “How hard I find it to see what is right in front of my eyes!”⁴⁰ The art of sleuthing has long fascinated the American public, and news reports on the expanding uses of DNA and television series such as *CSI: Crime Scene Investigation* have done much to capture the public's fascination

with criminal investigation and forensic science in the 21st century. This interest in “sleuthing” is not a recent phenomenon. For decades, Americans have feasted on the exploits of dozens of fictional masterminds, like Sherlock Holmes, Agatha Christie’s Hercule Poirot and Miss Marple, Clint Eastwood’s portrayal of Detective “Dirty Harry” Callahan, and Peter Falk’s Columbo, to name a few.

Attributes of Detectives

It’s worth reiterating that becoming a detective is not simply a matter of having a desire to do so. Indeed, there is probably no professor of criminal justice in America who has not heard at least a hundred times from a student that their career goal is “to be a homicide detective.” As noted in the introduction, this is one of the greatest misperceptions of the occupation. Although there are exceptions—such as one’s being hired and trained by the Federal Bureau of Investigation or a state investigative agency for that sole purpose—one must typically first be hired at the lowest (i.e., patrol or deputy) level. Then—normally after years of successfully proving your worth as an officer and perhaps effectively navigating several interviews—one might have a chance to be given the coveted “gold badge” of homicide investigator.

Furthermore, in reality, investigative work is largely misunderstood, often boring, and overrated; it results in arrests only a fraction of the time; and it relies strongly on the assistance of witnesses and even some luck. Nonetheless, the related fields of forensic science and criminalistics are some of the most rapidly developing areas of criminal justice. This is an exciting time to be in the investigative or forensic disciplines.

To be effective, detectives must be trained in general areas such as the laws of arrest, search, and seizure; investigative principles and practices (to include forensics and criminalistics); judicial proceedings; and oral and written communications. More specialized training will often be required if individuals will be specializing in such areas as sex crimes, family crimes, homicides, and gang and drug enforcement.

In sum, to be successful, the investigator must possess four personal attributes to enhance the detection of crime: an unusual capability for observation and recall; extensive knowledge of the law, rules of evidence, scientific aids, and laboratory services; power of imagination; and a working knowledge of social psychology.⁴¹

Forensic Science and Criminalistics: Defining the Terms

The terms “forensic science” and “criminalistics” are often used interchangeably. **Forensic science** is the broader term; it is that part of science used to answer legal questions. It is the examination, evaluation, and explanation of physical evidence in law. Forensic science encompasses pathology, toxicology, physical anthropology, odontology (development of dental structure and dental diseases), psychiatry, questioned documents, ballistics, tool work comparison, and serology (the reactions and properties of serums), among other fields.⁴²

Criminalistics is one branch of forensic science; it deals with the study of physical evidence related to crime. From such a study, a crime may be reconstructed. Criminalistics is interdisciplinary, drawing on mathematics, physics, chemistry, biology, anthropology, and many other scientific fields.⁴³ Basically, the analysis of physical evidence is concerned with identifying traces of evidence, reconstructing criminal acts, and establishing a common origin of samples of evidence. The types of information that physical evidence can provide are as follows:⁴⁴

- Information on the *corpus delicti* (or “body of the crime”) is physical evidence showing a crime was committed, such as tool marks, a broken door or window, a ransacked home, and missing valuables in a burglary; or a victim’s blood, a weapon, and torn clothing in an assault.
- Information on the *modus operandi* (or method of operation) is physical evidence showing means used by the criminal to gain entry, tools that were used, types of items taken, and other signs—items left at the scene, an accelerant used at an arson scene, the way crimes are committed, and so forth.

- *Linking a suspect with a victim* is one of the most important linkages, particularly with violent crimes. It includes hair, blood, clothing fibers, and cosmetics that may be transferred from victim to perpetrator. Items found in a suspect's possession can also be linked to a victim.
- *Linking a person to a crime scene* is also a common and significant linkage. It includes fingerprints, glove prints, blood, semen, hairs, fibers, soil, bullets, cartridge cases, tool marks, footprints or shoeprints, tire tracks, and objects that belonged to the criminal. Stolen property is the most obvious example.
- In terms of *disproving or supporting a witness's testimony*, evidence can indicate whether or not a person's version of events is true. An example is a driver whose car matches the description of a hit-and-run vehicle. If blood is found on the underside of the car and the driver claims he hit a dog, tests on the blood can determine whether the blood is from an animal or from a human.
- One of the best forms of evidence for *identification of a suspect* is DNA evidence, which proves "individualization." It can prove, without a doubt, that the person whose DNA was found was at the crime scene (discussed later in this chapter).



Forensic scientists examine all kinds of articles and substances in their search for physical evidence that will link persons to their crimes.

©Jochen Tack/Alamy

Investigative Stages and Activities

Detectives operate under an age-old theory that there is no such thing as a perfect crime; criminals either leave a bit of themselves or take something away from the crime scene. This is termed **Locard's exchange principle**, which asserts that when any person comes into contact with an object or another person, a cross-transfer of evidence—in the form of fingerprints, hairs, fibers, and all manner of residue or other materials—will occur.⁴⁵ An example is when a victim is strangled to death (by an assailant who is not wearing gloves) the suspect may well have the victim's skin cells under his nails, the victim's hair on his clothing, and other such residual material on his person.⁴⁶

Cases not solved in the initial phase of the apprehension process are assigned either to an investigative specialist or, in smaller police agencies, to an experienced uniformed officer who functions as a part-time investigator.

The following are brief descriptions of the basic investigative stages:⁴⁷

- *The preliminary investigation:* Duties include establishing whether a crime has been committed; securing from any witnesses a description of the perpetrator and their vehicle; locating and interviewing the victim and all witnesses; protecting the crime scene (and

searching for and collecting all items of possible physical evidence); determining how the crime was committed and what the resulting injuries were, as well as the nature of property taken; recording in field notes and sketches all data about the crime; and arranging for photographs of the crime scene.

- *The continuing investigation:* This stage includes follow-up interviews; developing a theory of the crime; analyzing the significance of information and evidence; continuing the search for witnesses; beginning to contact crime lab technicians and assessing their analyses of the evidence; conducting surveillances, interrogations, and polygraph tests, as appropriate; and preparing the case for the prosecutor.
- *Reconstructing the crime:* At this stage, the investigator seeks a rational theory of the crime. Most often, inductive reasoning is used: The collected information and evidence are analyzed carefully to develop a theory. One of the major traits of criminals is vanity; their belief in their own cleverness, not chance, is the key factor in their leaving a vital clue. Investigators look for mistakes.
- *Focusing the investigation:* When this stage is reached, all investigative efforts are directed toward proving that one suspect (perhaps with accomplices) is guilty of the crime. This decision is based on the investigator's analysis of the relationships among the crime, the investigation, and the habits and attitudes of the suspect.

A Word About Crime Scenes

On the subject of the **crime scene**, we will not go into detail concerning the roles of patrol officers, crime scene technicians, and investigators; however, it should be emphasized that the protection of the crime scene and all evidence contained therein is of utmost importance for these personnel if the scene is to be properly preserved and evidence properly collected and analyzed. It is critical at the moment they arrive, responding personnel are trained to (1) describe vehicles (make, model, color, condition, license plate number) and individuals (height, weight, race, age, clothing, sex, distinguishing features), including their direction of travel from first observation; (2) assess the scene for officer safety (downed power lines, animals, biohazards, chemicals, weapons); (3) watch for violent persons and attend to any emergency medical needs; and (4) prevent any unauthorized persons from entering the scene. A good resource for crime scene investigation, published by the National Institute of Justice, is titled *Crime Scene Investigation: A Reference for Law Enforcement Training*.⁴⁸

PRACTITIONER'S PERSPECTIVE

CRIME SCENE INVESTIGATOR



Name: Angela Benford

Position: Crime Scene Investigator

Location: Aurora, Colorado

What is your career story? I started as an Explorer with the Arapahoe County Sheriff's Department, which is a program for the Boy Scouts. I started there at 15. There, I got to work with police officers and the Crime Prevention Unit and the crime lab, and I was exposed to all of the different criminal justice programs. When I started that, I was going to be a police officer, so I went to college and majored in criminal justice. But then, I took the science class that they have designed for the criminal justice students, Intro to Criminalistics, and I got hooked. We had a person come in and talk to us about blood spatter interpretation, and we did shoe print castings. And I decided that's what I wanted to do. So I added another major and took a bunch of chemistry and double majored in criminal justice and chemistry.

What are some challenges and misconceptions you face in this position? Some of the biggest myths are perpetuated by the media, with TV shows like *CSI* and *NCIS* and others on reality TV. In these shows, if you're a crime scene investigator, you show up on the scene, you collect all the evidence, you process all the evidence, and you arrest the suspect. But in reality, there are multiple jobs for each of those actions. The crime scene investigators are the ones that go out to the scenes and document the evidence. Then we bring it back to a lab specialist, and depending on what type of evidence it is, it could go to a latent print examiner or a question document examiner, so there are multiple jobs in that. And then it's a detective's job to go out and interview suspects and arrest them. In some police departments, the roles are more merged, but the larger the police department, the more individuated the roles are.

What directions do you envision your department going in the future? What I see changing in the future of crime scene investigation is that technology is going to keep growing and growing. Already we have a 3-D scanner that we take out to a scene, and it documents the measurements and takes photographs, and we can then create a model of the scene back at the lab. These technologies are going to get even better, to the point where you might be a jury member in court and they bring in a computer, and you can walk through the crime scene as they're talking about it.

Uses of Informants and Interrogations

No discussion of police involvement in criminal investigations would be complete without consideration of police use of informants as well as interrogations, both of which occupy a central role in this arena. Sometimes common citizens act as **informants** concerning crime and disorder (which is the lifeblood of community policing and problem-solving, discussed earlier), contacting the police to report suspicious or criminal activity—perhaps when observing suspicious people coming and going at all hours and in high volume at a house in their neighborhood. A more controversial use of informants occurs when the person providing information is a criminal himself. The police must often rely heavily on such persons to obtain information about crimes, arrest offenders, and obtain probable cause for arrest and search warrants. Prosecutors also must become involved with such persons; in exchange for providing information, the informant expects some benefits from the state in return, such as monetary payments, immunity from prosecution, sentence reductions, dropped charges, and even the freedom to continue criminal activity. This situation becomes problematic when such informants engage in outright lying or exaggeration, which can contribute significantly to wrongful convictions; therefore, controversy has developed over time concerning the use of confidential informants, with their testimony often challenged in court.⁴⁹

Prior to discussing the use of **interrogations**, it is first necessary to explain how they differ from police interviews. An interview involves merely questioning an individual in order to obtain superficial information; for example, a field interview by a patrol officer would include obtaining an individual's name, address, place of employment, and so on. These questions might be said to be *inquisitory*.

Interrogations, by contrast, are more purposeful—even *accusatory*—focusing on a specific crime and thus involving the formal questioning of a suspect in order to obtain incriminating information and/or a confession. Accordingly, persons being interrogated may well be reluctant, uncooperative, and even hostile toward such questioning—and may warrant being given the *Miranda* warning, discussed in Chapter 8.

Experienced investigators often adhere to the following “articles of faith” during interrogations: take your time; keep a written record of information gleaned; avoid asking yes/no questions; and observe any changes in the suspect’s behavior and visual cues (e.g., lack of eye contact, foot or finger tapping, short breaths, tightly clenched or wringing hands, clearing of the throat, fidgeting in the chair).⁵⁰

As with the discussion of crime scenes, this description is very simplistic. Any serious—and successful—attempt at interrogating suspects must typically involve considerable training and experience.

YOU BE THE . . . DETECTIVE

As the coach opened the door to the locker room, the only light that shone was from the players’ large shower area. Upon flipping the light switch, he saw the body of his once “ace” pitcher, Hines, lying on the floor in the shower. In his pale left hand, he held a gun. There was a bullet wound in his left temple. Under his tanned right hand was a note saying, “My pitching days are gone, my debts and humiliation more than I can bear. Sorry.” His nearby locker contained a half-empty bottle of beer, his uniform, an uneaten stadium hot dog, a picture of his two children, and his Acme-brand ball glove with “RH” stamped in the webbing. Wet footprints were observed walking in and out of the shower. Upon surveying the scene, the responding detective said, “I do not believe this was a suicide.”

1. Was this a suicide or a murder?
2. What fact(s) led you to this conclusion?

In the Detective’s Toolkit: “ROP” and “PIVOT”

Like law enforcement personnel of all ranks, today’s detectives must be as proactive as possible for effecting crime prevention. This chapter section briefly describes two such strategies.

Repeat Offender Programs (ROP)

It has long been known that a small proportion of persistent and prolific offenders are responsible for a large percentage of criminal activity⁵¹ and often known to criminal justice practitioners as chronic offenders (or career criminals). Therefore, many police agencies operate investigative units typically termed a **repeat offender program, or (ROP)** (pronounced “rope”). These detectives receive specialized training and equipment to surveil chronic offenders who have a high likelihood of reoffending and then focus their resources on them, trying to catch them in a criminal act. ROP detectives also work closely with prosecutors to ensure ROP cases are given special attention by the courts. Evaluations of ROP initiatives typically demonstrate that they can be highly effective at increasing the likelihood of imprisonment and increasing the length of prison terms for such offenders. The federal Office of Community Oriented Policing Services has published an excellent guide for predicting, measuring, and addressing repeat offending.⁵²

PIVOT (Place Based Investigations of Violent Offender Territories)

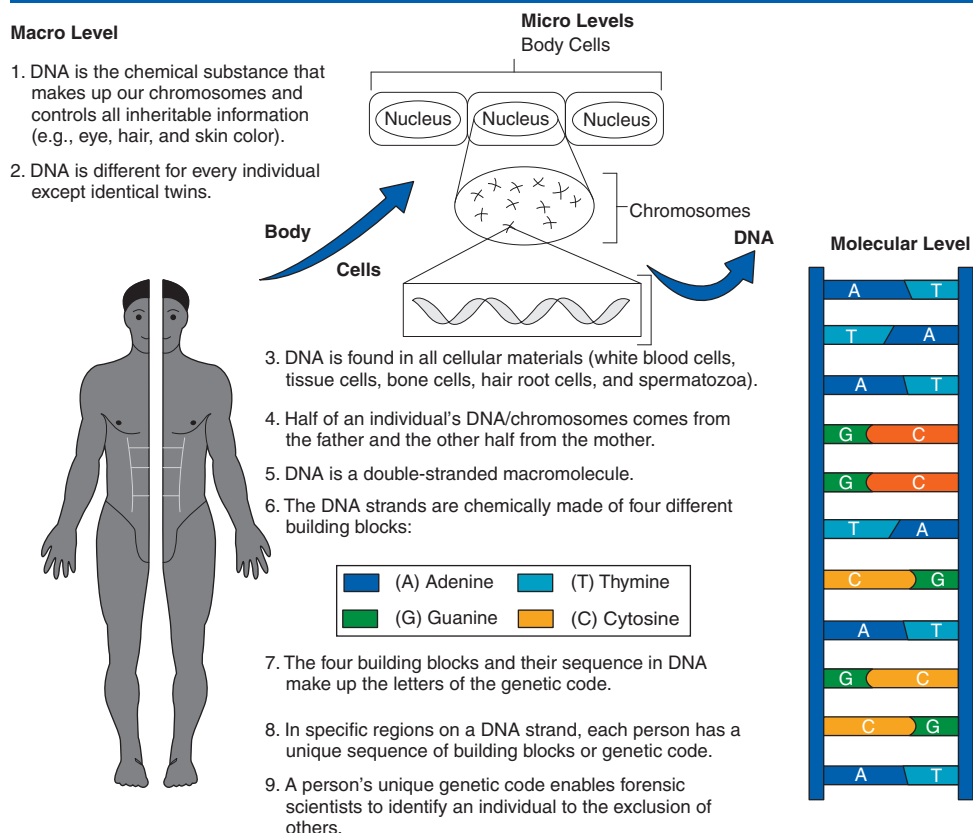
In addition to a small number of *offenders* contributing disproportionately to a large percentage of criminal activity, certain problematic *locations* contribute as well. Therefore, just as many detectives seek to identify and focus on their chronic, career offenders, so, too, do they employ a tactic known as **Place Based Investigations of Violent Offender Territories (PIVOT)** for focusing resources at specific locations. This strategy is based on the idea that criminals use a network of both public and private locations to plan their illegal activities and execute their plans, changing the way in which places are managed and used. Interventions might involve altering parking restrictions or traffic patterns along a

road commonly used in drive-by shootings or seizing and repurposing a corner store laundering money for a violent drug market. Detectives are therefore trained to uncover this network of places. Detectives then work with other city agencies (such as the business licensing department, the building and safety department, etc.) to dismantle the place network and disrupt the infrastructure upon which criminals rely.⁵³

Using DNA Analysis

As discussed later in this chapter, today **DNA** is the most sophisticated and reliable type of physical evidence (see Figure 6.5). Police are now able to submit to laboratories evidence that until recently was not even possible to examine. For example, “touch” DNA evidence can now be examined and requires very small amounts of skin cells left on an object after it has been touched or handled; it can be used to determine whether a defendant merely touched a weapon or whose hand threw drugs to the floor of a room.⁵⁴

FIGURE 6.5 ■ What Is DNA?



A testimonial to DNA's promise in investigations is offered by a former supervising criminalist of the Los Angeles County Sheriff's Department:

The power of what we can look for and analyze now is incredible. It's like magic. Every day we discover evidence where we never thought it would be. You almost can't do anything without leaving some DNA around. DNA takes longer than fingerprints to analyze, but you get a really big bang for your buck.⁵⁵

Furthermore, DNA has allowed investigative personnel to exonerate people who were convicted in the past for crimes they did not commit. Indeed, the National Registry of Exonerations at the University of Michigan Law School lists more than 2,400 exonerations since 1989 with the help of DNA evidence.⁵⁶

Also see the accompanying case study feature concerning how DNA is used to solve **cold cases**. These are cases selected for investigation that are usually at least a year old and cannot be addressed by the original investigative personnel because of workload, time constraints, or the lack of viable leads. Cases are prioritized on the basis of the likelihood of an eventual solution, with the highest-priority cases being those in which there is an identified homicide victim, suspects were previously named or identified through forensic methods, an arrest warrant was previously issued, significant physical evidence can be reprocessed, newly documented leads have arisen, and critical witnesses are available and willing to cooperate.



Today, the power of what can be done with DNA, as well as its variety of uses, is incredible.

AP Photo/Mike Groll

Case Study 6.1

A Cold Case Involving “The Boston Strangler”

A serial murderer was loose in the city of Boston and its suburbs during the early 1960s. All 13 victims were women ranging in age from 19 to 85; often, they were found alone, strangled with their own nylon stockings and sexually assaulted. Detectives had few solid leads, but in 1964, one Albert DeSalvo—a Massachusetts man with a long history of breaking and entering—was arrested and eventually sentenced to life in prison after being linked to numerous other sexual assaults throughout New England. While in custody for those offenses, DeSalvo confessed to the Boston Strangler murders. DeSalvo never went to trial for the murders, however, and he was killed in 1973 by a fellow inmate while serving his sentence for sexual assault. Despite his confession, uncertainty lingered in terms of whether DeSalvo was actually the Boston Strangler because of inconsistencies with his statements, psychiatric examinations suggesting he was not being truthful, and the lack of physical evidence connecting him to the crime scenes. Furthermore, many of the details he gave about the murders could have been obtained from their related press coverage. Indeed, the true identity of the Boston Strangler remained unknown for nearly a half century, while the murders inspired books, movies, and numerous documentaries.

In 2012, the Boston Police Department revisited the Strangler murders as a cold case. Scientists were able to match DNA provided from Albert DeSalvo’s nephew to seminal fluid that was collected at the scene of the Strangler’s last murder. Given that the test was unable to identify a specific individual, investigators now had enough evidence, however, to exhume DeSalvo’s body for

a more thorough examination. It was subsequently determined that DNA from DeSalvo's teeth and bones were a match to the seminal fluid gathered at the scene of the murder. Therefore, nearly 50 years after the discovery of the final victim, the evidence was conclusive: Albert DeSalvo was indeed the Boston Strangler.

Sources: Jack Thomas, "Victims of the Boston Strangler," *Boston Globe*, June 13, 2002, <https://www.bostonglobe.com/metro/2013/07/11/victims-boston-strangler/CwbsZISNcfwmhSetpqNlhL/story.html>; "He's Not the Boston Strangler. He Didn't Kill My Aunt," *Guardian*, September 21, 2000, <http://www.theguardian.com/g2/story/0,3604,371006,00.html>; Philip Bulman, "Solving Cold Cases With DNA: The Boston Strangler Case," *NIJ Journal* 273 (2014): 48–51, <http://www.nij.gov/journals/273/Pages/boston-strangler.aspx>. For further information concerning this and other such cases, see Eric W. Hickey, *Serial Murderers and Their Victims*, 5th ed. (Wadsworth, Cengage Learning).

IN A NUTSHELL

- The idea of a police subculture was first proposed in 1950 by William Westley, who found a high degree of secrecy and violence.
- Recruit academy training covers a variety of subjects; neophyte officers learn how to apply the law, use lethal and less-lethal weapons, and deal with criminal suspects, offenders, victims, and witnesses; hands-on training and simulated situations are also employed.
- Studies show that higher education is important for police officers in order to interact with an educated public, enforce the rule of law, investigate crimes, testify in court, write cogent and accurate reports, and perform myriad other duties. From 1967 to 1986, every national commission that studied crime, violence, and police in America maintained that a college education could help the police to do their jobs better.
- After leaving the academy, new officers are assigned to a veteran officer—a field training officer—for initial field instruction and observation; this phase of training helps recruits make the transition from the academy to the streets while still on probationary status.
- Jerome Skolnick said officers develop a working personality, and the police role contains two important variables: danger and authority. Consequently, they develop a "perceptual shorthand" to identify certain kinds of people as "symbolic assailants"—those who pose a physical threat to them.
- Police have four basic tasks: enforcing the laws, performing welfare tasks, preventing crimes, and protecting the innocent.
- James Q. Wilson maintained there are three distinctive policing styles: the watchman style, the legalistic style, and the service style.
- Between 150 and 250 officers die each year in line-of-duty deaths (COVID-19 being uncommonly deadly for officers); of those who are murdered, most are young, have about a decade in service, are assigned to patrol, and are either ambushed or killed in an arrest situation.
- There are several stressors for police, both within and outside of their employing agency. It is important that officers take appropriate measures to reduce or eliminate stress.
- Full enforcement of the laws by police is a myth, with officers typically having considerable discretion in whether or not to detain or arrest someone. Determining factors include the law (e.g., some ordinances mandate arrest for certain offenses, such as domestic violence), the officer's attitude (concerning the law that is violated, as well as toward the offender), and the citizen's attitude toward the officer.

- Today, under the community policing philosophy, officers are trained to examine the underlying causes of problems in the neighborhoods on their beats and to involve citizens in the long-term resolution of neighborhood problems.
- The fields of forensic science and criminalistics are the most rapidly developing areas in policing—and probably in all criminal justice.
- There are a number of key factors in how police officers and detectives must treat crime scenes and conduct suspect interrogations.
- Detectives employ several tools in their trade, including identifying and surveiling career/chronic offenders and examining locations where most crimes occur. Furthermore, DNA is the most sophisticated and reliable type of physical evidence, used to obtain convictions in hundreds of cases as well as to exonerate many arrestees. It has also been used to solve dozens of cold cases.

KEY TERMS

Academy training (p. 130)	Informant (p. 144)
Cold case (p. 147)	Interrogation (p. 144)
Community policing and problem-solving (p. 139)	Kansas City Preventive Patrol Experiment (p. 134)
Crime scene (p. 143)	Locard's exchange principle (p. 142)
Criminalistics (p. 141)	Place Based Investigations of Violent Offender Territories (PIVOT) (p. 145)
DNA (p. 146)	Policing role (p. 132)
Field training officer (FTO) (p. 131)	Policing styles (p. 132)
Forensic science (p. 141)	Repeat offender program (ROP) (p. 145)
Higher education (for police) (p. 129)	Stress (p. 135)
Hurdle process (recruiting, hiring, training police) (p. 127)	Tasks of policing (four basic) (p. 133)

REVIEW QUESTIONS

1. What ideal traits are sought among those persons wishing to enter policing?
2. What instructional topics are covered with police recruits while in academy training?
3. What are the methods and purposes of the FTO concept?
4. What is meant by the police “working personality,” how was the concept developed, and how does it function?
5. What are the four basic tasks of the police?
6. What are the primary styles of policing?
7. What are the primary causes of stress among police officers?
8. What examples can you provide of police use of discretion? What are some pros and cons of police use of discretionary authority?
9. How should a crime scene be handled, and why?
10. What primary difference is there between a detective's interviewing and interrogating someone, and what are some tips for how the latter should be performed?
11. What is a cold case, and what criteria are used to treat a criminal case as such?
12. What are the attributes, myths, and methods that tend to revolve around and be employed by investigative personnel?

LEARN BY DOING

1. You are a patrol sergeant lecturing to your agency's Citizens' Police Academy about the patrol function. Someone asks, "Sergeant, your officers obviously can't enforce all of the laws all of the time. Which laws are always enforced, and which ones are not?" How do you respond to her (without saying something absurd like "We enforce all of the laws, all of the time," which of course would be untrue)? How would you fully explain police discretion to the group?
2. You have been assigned to develop an examination for persons seeking a detective assignment in your agency. What will be the content of your exam? (For guidance, you may wish to begin by reviewing the study guide for the investigator's exam used by the Los Angeles County District Attorney's Office, Examination Unit, at <https://da.lacounty.gov/sites/default/files/invstudyguide.pdf>).
3. For a practical view of "what works" in terms of addressing all kinds of criminal matters, visit the website of the Center for Problem-Oriented Policing at <http://www.popcenter.org/problems/>. The center has published more than 70 POP guides, which summarize how a variety of problems of crime and disorder can be examined and addressed.



©iStockphoto.com/jacoblund



POLICING METHODS AND CHALLENGES

Issues of Force, Reform, and Liability

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 7.1** Identify questions and issues concerning police reform that flowed from the death of George Floyd.
- 7.2** Assess police use of force in terms of the current state of police–community (particularly marginalized group) relations.
- 7.3** Define constitutional policing, legitimacy, and procedural justice as they apply to police efforts to bring harmony to their role.
- 7.4** Explain what is meant by the term “police brutality.”
- 7.5** Explain civil liability, the types of police actions (or inaction) that are vulnerable to lawsuits, and how police officers—including their supervisors—might be held criminally liable for their misconduct.

ASSESS YOUR AWARENESS

Check your current knowledge of police methods and challenges by responding to the following eight true–false items; check your answers after reading this chapter.

- 1.** In the aftermath of George Floyd’s death in Minnesota in May 2020, the percentage of white Americans favoring the police dropped by double digits.
- 2.** Police reform ideas now favored by the public include eliminating use of military gear and body-worn cameras.
- 3.** The Supreme Court has ruled that the use of force must be objectively reasonable in view of all the facts and circumstances of each particular case.
- 4.** The recent deployment of hundreds of FBI agents to protect federal property and combat vandalism in Chicago was widely endorsed as a trend of the future.
- 5.** Currently, the only legal means of being compensated when police violate someone’s rights is to take the matter to a criminal trial.
- 6.** The decision by a police officer to pursue a citizen in a motor vehicle is among the most critical that can be made.
- 7.** The doctrine of qualified immunity has been all but eliminated by the Supreme Court and Congress.
- 8.** Constitutional policing, legitimacy, and procedural justice should form the foundation of policing, rather than police having a “soldier” mindset.

Answers can be found on page 401.

This chapter addresses police methods and challenges and might well begin with several age-old questions: Who are the police? What do they do: “serve and protect” or “enforce the law”? Are they “guardians” or “soldiers”; “crime fighters” or “social workers”? Certainly, these questions—which have vexed people since American policing evolved to where it is today—will be answered differently depending on one’s perspective and mindset.

Those differing attitudes are also shaped by one’s exposure to policing via the film industry; indeed, very little of what is “known” from that exposure is likely to be true. For example, high-speed chases, gun battles, and explosions are definitely not the norm. In fact, research has shown for a half century that very little—less than 20%—of police work has to do with actual crime fighting.¹ Furthermore, those who have worked in the field for any length of time would likely attest that police work is not glamorous and is quite boring for long periods of time, punctuated by occasional physical and mental exertion and feelings of dread (the uniform

wears like a target or a magnet for danger). It is generally low in monetary compensation and high in stress, sleep deprivation, and danger. And it affords an inside look at the worst society has to offer in terms of what humans do to themselves and others.

Also largely lost in depictions of policing are what might be called “random acts of kindness” performed each day by officers (officers buying food for struggling families and shoes for homeless men, etc.).² Also seldom brought to the public’s attention are the inevitable danger and the circumstances behind the 150 to 250 line-of-duty deaths of police officers occurring each year in the United States.³

The great majority of the 600,000 U.S. police officers are honorable men and women. However, what is often brought to the public’s attention are police shootings, particularly those that are lethal (the number of such shootings being very consistent, at nearly 1,000 persons per year—about 24% of them involving Black males).⁴ Indeed, in the eyes of the public, nothing compensates for police misconduct or the wrongful use of deadly force. As you read about police methods and challenges in this chapter, consider whether policing in the United States can—or should—be reimagined and retooled, especially after reading the broad questions posed concerning police reform in the early part of the chapter. Remember that you as a citizen, taxpayer, consumer of police services, student, and possibly even a criminal justice practitioner of the future may well have to confront each of those questions in the future.

INTRODUCTION

This chapter focuses on two broad topics: police use of force (especially that which is lethal) and civil liability. Regarding the former, as already indicated, lethal police shootings over the past few years (and particularly since that of George Floyd in May 2020 by Officer Derek Chauvin in Minneapolis, Minnesota) have pitted many citizens against the police to a degree seldom, if ever, seen in this nation. Therefore, this chapter begins by looking at the global impact of that singular event, followed by an overview of six issues raised nationally in its aftermath. Then we consider how changes in mindset and adoption of different police methods and philosophies (e.g., constitutional policing, procedural justice, addressing police brutality) are needed to bridge the police–community chasm. Finally, we review inappropriate police behaviors that can lead to civil liability, as well as laws that exist to protect the public. The chapter includes three case studies and a Going Global feature.

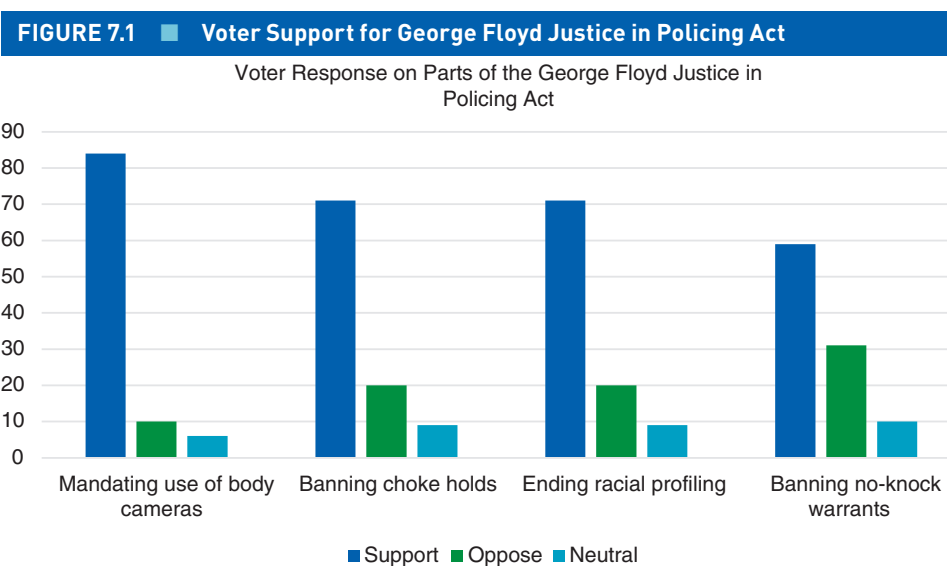
THE KILLING HEARD AROUND THE WORLD

Only someone either too young to understand or largely out of touch with the news would be unaware of the serious strains now put on police–community relations—largely due to and as an outgrowth of the nearly 9.5-minute video of George Floyd’s killing. While police roles and functions have always been controversial, perhaps that has never more been the case than the ensuing scrutiny of police service following that death (for which Officer Chauvin was convicted of second-degree murder). This singular act went viral; perhaps its impact is best exemplified by the protests and violent riots that took place around the world, as some examples will demonstrate:

- Japan: Marches were held as both a gesture of solidarity with U.S. protesters and a call to confront racism at home, where there is discrimination toward biracial individuals.
- Australia: Some of the largest protests occurred here, with tens of thousands of people protesting and carrying names of some of the 476 Aboriginal and island persons who had died in police custody over the past 2 decades.
- United Kingdom: Protesters tore down a statue of a 17th century slave trader, as police data suggest that Black people are 9 times as likely as whites to be stopped and searched by police in England and Wales.

- France: Protests erupted due to the attention placed on police violence, with activists alleging there was a long history of brutality. A ban on choke holds was announced.⁵
- Brazil: The nation was already in crisis because the president had compared Black people to cattle and celebrated police brutality. Protests brought unprecedented attention from the media, and major companies introduced Black-only hiring programs.

In the aftermath of the killing of George Floyd, Americans struggled with how to reconcile race relations in their country and the role of the police in that endeavor. Their opinions of the police in general found that the favorable perception of police by white Americans before and after Floyd's death had dropped by double digits, from 72% to 61%, as police confronted protesters amid nationwide demonstrations against perceived systemic racism (only 38% of Black Americans viewing the police favorably).⁶ A survey also found that 84% supported mandatory use of body cameras, 71% favored banning choke holds, and 59% favored banning no-knock warrants (Figure 7.1).⁷



Source: Zhou, L. (2021) Where Americans stand on policing. *Vox Media*. <https://www.vox.com/22372342/police-reform-derek-chauvin>.

As demonstrations were being held across this country, perhaps the most turbulent (and lengthy) protests were in Portland, Oregon, which began in May 2020 and occurred nightly for roughly 100 days.⁸ While the majority of the Portland protests were peaceful, many involved rioting, arson, and vandalism, with police deploying tear gas and other weapons. Another notable aspect was the federal government's deployment of federal law enforcement officers for the stated purpose of protecting federal property—a move that was legally questionable in the eyes of many and widely criticized by Portland's mayor and resulted in a lawsuit by the city.⁹ This use of federal officers is discussed more later in the chapter.

Key Questions That Resonated in the Aftermath

Following Floyd's death, many significant questions were posed and challenges raised concerning police methods (one of which was the question of “defunding” the police, discussed in an earlier chapter). An overview of six of those questions and issues follows.

Is Police Reform Needed?

Significantly, a 2020 Gallup poll found that most (58%) of Americans believe major changes are needed in U.S. law enforcement, while another 36% support minor changes. Some ideas found in

various surveys are certainly interesting, such as forcing officers to resign and reapply for their jobs in order to weed out undesirable persons. Other ideas include limiting the focus of policing to serious and violent crimes, requiring training in de-escalation techniques, requiring officers to wear body cameras, requiring agencies to publicly report all incidents involving the use of force, and eliminating use of military gear. Many respondents also favor having social workers and EMTs respond to mental health, substance abuse, and domestic violence calls.¹⁰

The aforementioned Gallup poll also asked citizens what specific types of police reform they wanted to see occur. Top reform ideas include the following: changing management so officers with multiple incidents of abuse could be terminated (98%); a requirement that officers have good relations with the community (97%); and changing management practices so officer abuses are punished (96%).¹¹

Should Police Training and Roles Be Modified?

Numerous time-use studies have demonstrated that most police officers devote very little of their time to actually fighting serious or violent crimes; rather, they devote most of their time dealing with traffic, medical calls, persons with mental health issues, and general order-maintenance and problem-solving duties.

However, it must be emphasized that, in general, officers are often ill-equipped in their training to handle many of the types of calls they must confront, such as those involving the mentally ill. The average duration of basic recruit training for new recruits is about 840 hours, with the most time being spent learning firearms skills (the average instruction time is about 71 hours) and defensive tactics (60 hours).¹² This training, although necessary for their own safety, does little to prepare them for what Ed Flynn (former police chief in five cities) refers to as “the intractable social problems that are dumped in the laps of our 25-to-30-year-old first responders.”¹³ Officers also necessarily devote much of their time in neighborhoods where social problems run deep.

In sum, the community brings all manner of problems to the police, but they seldom have all of the tools necessary to solve them. The choice for administrators, then, seems clear: Either officers must receive training that focuses on dealing with the nonviolent/critical incident types of calls, or those types of calls must be addressed by those persons who possess such specialized training. Real reform, according to some observers, involves shrinking the police footprint so officers only respond to calls for service where an armed, uniformed officer is required and using other responders (unarmed) for traffic, mental health, and most disorder types of calls.¹⁴

Should the Laws Be Changed?

A number of states have indicated support for legislation to restrict choke holds and to effect other changes toward police reform, such as adopting use-of-force policies, reducing or eliminating officers' qualified immunity, and so on; but in a number of instances, these bills never got past their initial committee hearings.¹⁵ Some of these statutory enactments are listed:

- In Denver, a program was established that allows 911 dispatchers to send mental-health personnel to nonviolent incidents.¹⁶
- Maryland became the first state to repeal its police bill of rights, which had shielded police from investigation and discipline.¹⁷
- A Washington, DC, law prohibits police from using tear gas or riot gear to break up protests, bans the use of choke holds, strengthens disciplinary procedures, and speeds up the release of body camera footage and names of officers involved in fatal shootings.¹⁸
- Washington State enacted a dozen bills in May 2021 which included several reforms: bans on police use of choke holds, neck restraints, and no-knock warrants; a requirement of officers to intervene if their colleagues engage in excessive force; creation of an independent office to review the use of deadly force by police; and a requirement of officers to use “reasonable care,” including exhausting de-escalation tactics, in carrying out their duties. The use of tear gas and car chases was restricted, and it was made easier for citizens to sue officers who inflict injury.¹⁹

- In Nevada, a new law gives the state attorney general the authority to investigate allegations of police abuses and makes it harder for police to obtain no-knock search warrants.²⁰
- The city of Minneapolis turned down calls to defund and dismantle the police, but it also banned most no-knock raids, most choke holds, “warrior training” programs, and officers from shooting at moving vehicles.²¹
- California enacted a law in August 2019 that generally narrows the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance, and how the officers’ actions are to be evaluated.²²
- Several large police agencies—including those in New York, Los Angeles, Chicago, Philadelphia, and Houston—quickly banned choke holds,²³ while others moved to strengthen—and publish—police disciplinary procedures and outcomes and to release body camera footage much faster. New York went a step farther in February 2021 when a three-judge panel of the federal appeals court allowed the city to release hundreds of thousands of police disciplinary records and ended a long and bitter political battle to open the records to public scrutiny.²⁴

Should Federal Officers Be Deployed in Cities?

As already indicated, there were lawsuits filed by the city of Portland (and other cities) challenging the presence of federal agents (mostly Department of Homeland Security, or DHS, personnel) during prolonged and nightly protests that often involved violence. The lawsuits asserted that many of the federal officers (1) were not wearing identifiable uniforms or other insignia; (2) were not driving marked law enforcement vehicles; and (3) were not identifying themselves either publicly or even to those whom they have detained and arrested. Another element was the fact that local authorities—mayors, sheriffs, and governors—had insisted federal assistance was not wanted and their presence only aggravated the situation.

Legal issues that were raised included whether the federal government could extend its ability to deploy agents in the 50 states; whether federal officers could patrol streets that were at a significant distance from federal buildings (and arrest protesters who appeared to pose no imminent threat); and whether federal officers must identify themselves as such. Questions also arose concerning which federal agency or individual was in charge of the officers.²⁵

A followup report by the DHS Office of Inspector General found DHS had the authority to deploy the officers in Portland; 755 DHS officers (from at least four different agencies) participated in the effort to protect federal property there (at a cost of more than \$12 million); not all of the officers had been trained in riot and crowd control and used inconsistent uniforms and tactics; hundreds of the officers were injured; and determined better planning and execution was needed in future “cross-component” activities.²⁶

Case Study 7.1

Police Reform via Executive Order

In May 2022, on the second anniversary of George Floyd’s death, President Joe Biden signed an executive order (EO) to frame a reform package. Signed one day following the horrific May 24, 2022, murders of 21 students and teachers in Uvalde, Texas, this EO directly affects only about 100,000 federal law enforcement officers, while most police officers work at the state and local levels; only Congress or state and local leaders can attempt to bring about reform in those larger arenas. Still, the EO restores the Obama administration’s restrictions on the transfer of military equipment to police departments, mandates body cameras for all federal officers, restricts chokeholds, and curtails no-knock warrants. It also sets narrow limits on when force is permitted and requires officers to intervene to stop excessive force and to render medical aid.

Undoubtedly, the EO has an underlying aim of setting standards that local police departments will adopt as well. It also envisions the U.S. Justice Department providing more oversight of local

police through “pattern or practice” investigations and requires more information to be reported on police misconduct and use of force, including the creation of a new database to which all federal agencies must contribute.

Source: Editorial Board, “Biden Pushes Police Reform—but There Is Only So Much He Can Do,” *The Washington Post*, May 30, 2022, <https://www.washingtonpost.com/opinions/2022/05/29/biden-police-reform-options-limited/>.

Should Local Police Be Given Military Gear?

Public support for the use of surplus military equipment by local police agencies has increased and declined, ebbed and flowed, over the past several years. Many people believe the police should avoid bringing heavy equipment to the scene of a demonstration or wearing protective riot gear if there is no indication that a demonstration will be violent.

Under what is termed a “1033 Program,” a decades-old Department of Defense program has given local police agencies billions of dollars of surplus military equipment. In mid-2014, however, the public witnessed police wearing tactical gear and rolling in armored vehicles in Ferguson, Missouri—which many viewed as poor “optics” of an “occupying force”—following the police shooting death of an 18-year-old Black man, Michael Brown; this show of force generally widened the rift between police and communities everywhere it was viewed. What soon followed, under President Obama, was a reduction of shipments of such gear, with some agencies typically receiving equipment only for the presence of an active shooter—military rifles, weapon sights, and night-vision goggles.

But a lifting of restrictions by President Trump in 2017 and national protests and riots in the aftermath of George Floyd’s killing in mid-2020 brought about a renewed interest in the use of surplus military gear, with local agencies receiving nearly half a billion dollars of such equipment during those few years. Congress again took an interest in looking at such transfers of military equipment. By mid-2021, however, the general public became highly security conscious as a result of the January 6, 2021, attack on and siege of the U.S. Capitol as well as courthouses and other public buildings that involved more protests, riots, vandalism, and deaths. Once again, as in Ferguson, many citizens saw police in camouflage gear and carrying semiautomatic weapons, with Humvees and national guard personnel standing by.

In the final analysis, while many or most people do not wish to see their police officers dressed like soldiers going to war, preferring to view their police as “guardians” rather than as “soldiers” or “warriors,” the police must also be prepared for a largely peaceful demonstration to quickly become a riotous mob. But as the President’s Task Force on 21st Century Policing stated:

Law enforcement culture should embrace a guardian mindset to build public trust and legitimacy. Toward that end, police and sheriffs’ departments should adopt procedural justice as the guiding principle for internal and external policies and practices to guide their interactions with the citizens they serve.²⁷

Case Study 7.2

The CAHOOTS Program

In 1989, an innovative public safety program was launched as a community policing initiative in Eugene, Oregon, to provide first response for crises involving mental illness, homelessness, and addiction. Known as CAHOOTS, the program has recently been spotlighted due to current police–community struggles in the United States. CAHOOTS workers are not trained in law enforcement; they are unarmed or have none of the authority of the police. Rather, the program uses mobile crisis intervention teams designed as an alternative to police response for nonviolent crises. CAHOOTS calls come to Eugene’s 911 system or the police nonemergency number where dispatchers are trained to recognize nonviolent situations with a behavioral health component. A team will respond (generally with a two-person team consisting of a medic—a nurse, paramedic,

or EMT—and a crisis worker trained in the mental health field), assess the situation, and stabilize the event depending on the medical or psychological need, information, referral, advocacy, and, when necessary, transportation to the appropriate resource. Teams are also trained in conflict resolution, welfare checks, suicide threats, and de-escalation and harm-reduction techniques; they also handle nonemergent medical issues, avoiding costly ambulance transport and emergency room treatment. In a given year, the CAHOOTS team will respond to nearly 20% of the Eugene Police Department’s overall calls for service. Evaluations indicate the cost savings of CAHOOTS are considerable; while its program budget is about \$2.1 million annually, the program has been shown to save the city of Eugene an estimated \$8.5 million in public safety spending per year.²⁸

Do you believe such a model as CAHOOTS could and should be adopted in whole or in part in some or all U.S. police agencies?

Alive and Well for Now: Qualified Immunity

In 2014, police asked Shaniz West, of Caldwell, Idaho, if they could enter her home to search for a fugitive (her ex-boyfriend); she gave them her consent and her house keys. Instead, officers called in a SWAT team, which entered forcefully and stayed over 10 hours, bombarding her home with tear gas grenades and shotgun blasts, shattering glass, blasting holes in the walls and ceiling, destroying personal belongings, and making her home uninhabitable for 2 months. West sued the police, but in 2020, the U.S. Supreme Court refused to hear the case.²⁹

Not only did West lose her appeal, but so did two plaintiffs in October 2021 in light of a Supreme Court decision that overturned two lower-court decisions and ensured the qualified immunity doctrine remains an integral part of the law for the foreseeable future. The decision—actually, two separate cases from Oklahoma (involving a fatal shooting of a hammer-wielding man) and California (officers accused of excessive force while making an arrest)—signaled that the Court is not retreating from its earlier precedents granting **qualified immunity** to police accused of using excessive force, except where constitutional rights were involved and prior court decisions that “clearly establish” that officers’ actions were wrong. The Court has long recognized that officers must often make split-second decisions and that eliminating qualified immunity could deter officers from using necessary force on duty out of fear that they will be held financially liable. In the words of the Court, police need “breathing room to make reasonable but mistaken judgments.” The Court has also said that qualified immunity protects all except the plainly incompetent or those who knowingly violate the law.

However, Floyd’s death caused a push in Congress to reform how the nation’s police officers perform in their jobs, including a renewed and vigorous discussion of qualified immunity. Because the doctrine is largely a creation of the courts, not based on the U.S. Constitution, Congress could pass a law amending, affirming, or revoking qualified immunity at any time.³⁰ For now, however, this platform in the platform of those seeking policing reform will not be available.³¹

Note, however, that as will be seen in the section on civil liability, police officers do *not* have absolute immunity for their actions; they can be sued and held liable (under what is termed “Section 1983”) when using force unlawfully and acting egregiously to deliberately harm someone. They can also be criminally charged, as qualified immunity is not a defense to a criminal charge.

USE OF FORCE: A SACRED TRUST

The police must use force at times to protect themselves or others; such force can include verbal directives, empty-hand control (grabs, holds), less lethal means (e.g., chemical sprays, baton, electrical device), and lethal means; the great majority of the time, such force is justified and applied appropriate to the circumstances. The issue often raised in a given situation is whether or not the type of force employed was reasonable under the circumstances—considering the severity of the crime, whether the suspect posed a threat, and whether the suspect was resisting or attempting to flee.

American society vests a tremendous amount of authority in its police officers. Indeed, the police are the only element of our society (except for military units, under certain circumstances) that is

permitted to use force—up to and including that which is lethal in nature—against its citizens. Balancing the scales, however, is the understanding that the police will use this tool judiciously, only when necessary, and as a last resort.

The U.S. Supreme Court ruled that the **use of force** must be

[o]bjectively reasonable in view of all the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.³²

However, determining what constitutes “objectively reasonable” is not always an easy task. Perhaps a good “test” (as provided by the Supreme Court in *Graham v. Connor*, 1989) is whether or not an officer’s actions were reasonable in light of the facts and circumstances confronting them, without regard to the officer’s underlying intent or motivation.

The sections that follow discuss some of the problems that exist between the police and citizens they serve, as well as some ideas for bridging the rifts in police–community relations.

A Sordid History

Britain’s Benjamin Disraeli observed more than a century ago, “No man will treat with indifference the principle of race. It is the key of history.” That is an excellent viewpoint from which to begin considering relations between police and marginalized populations in the United States since the country’s establishment—and especially since the 1950s.

Even before the race riots and civil unrest of the civil rights movement and Vietnam War began in earnest, James Baldwin, the African American sociologist, was moved to write in 1960 about police in Harlem:

None of the Police Commissioner’s men, even with the best will in the world, have any way of understanding the lives led by the people they swagger about in twos and threes controlling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gumdrops to children.³³



Problems of police–minority relations are long-standing in nature. Here, a 17-year-old civil rights demonstrator is attacked by a police dog in Birmingham, Alabama, in May 1963.

©AP Photo/Bill Hudson

Indeed, for many people from marginalized populations, the four words inscribed over the entrance to the U.S. Supreme Court building in Washington, DC—Equal Justice Under Law—have long been hollow; for them, justice is perceived as neither equal nor blind. In the aftermath of the 2014 police shooting death of Michael Brown in the city of Ferguson, Missouri, angry protesters raged for a

week as gas and rubber bullets were used, the National Guard was deployed, a police officer was shot, and the U.S. Department of Justice was compelled to issue a scathing report about the widespread racially biased abuses by police, who routinely targeted African Americans for arrests and ticketing. Much controversy also ensued concerning the use of the state's National Guard and military equipment and tactics.

Subsequent police shootings of POC (people of color) in other cities fostered many more thousands of demonstrations and “die-ins” across the country (as well as federal lawsuits against some officers’ employing agencies). “Black Lives Matter” and “I can’t breathe” became their rallying cries. Incidents that involve group members from underrepresented populations will often heighten the tension and lead to charges of racism against the entire police agency.



Black Lives Matter protesters gather in Washington, DC, on one of the many protests in 2020 following several incidents of police use of force around the country.

Highsmith, Carol M., <https://www.loc.gov/item/2020720161/>

CONSTITUTIONAL POLICING, LEGITIMACY, AND PROCEDURAL JUSTICE

Several of the aforementioned race-related incidents have led to a careful review of police practices and calls for reform. At the heart of this review are the many police leaders who are looking at their agency's culture in a new light and raising questions about disparate treatment with respect to the use of deadly force.

Constitutional Policing

Police chief executives are now becoming much more heavily involved in what is termed **constitutional policing**—a cornerstone of community policing and problem-solving efforts. When a police agency develops policies and practices that advance the constitutional goals of protecting citizens' rights and provides equal protection under the law, then, as New Haven, Connecticut, police chief Dean Esserman put it, “The Constitution is our boss. We are not warriors, we are guardians. The [police] oath is to the Constitution.”³⁴

Constitutional policing, then, forms the foundation of community policing. Police agencies cannot form positive and productive relationships with the citizens they serve if those communities do not trust the police or believe the police see their mission as protecting civil rights as well as public safety. Too often, concerns with constitutional aspects of policing occur only after the fact—when police officials, community members, and the courts look at an officer's actions to determine whether or not laws, ordinances, or agency policies were violated. Now, there is a growing recognition among police leaders that constitutional policing should be on the minds of all agency members on an everyday basis.

Legitimacy

A related concept is that of **police legitimacy**: the extent to which the community believes that police actions are appropriate, proper, and just, and its willingness to recognize police authority. If the police have a high level of perceived legitimacy, community members tend to be more willing to cooperate with the police and to accept the outcome of their interactions with the police. Public confidence involves the belief that the police are honest, are trying to do their jobs well, and are striving to protect the community against crime and violence. Moreover, legitimacy reflects the willingness of residents to defer to the law and to police authority—that is, their sense of obligation and responsibility to accept police authority. Finally, legitimacy involves the belief that police actions are morally justified and appropriate to the circumstances.³⁵

Clearly, this relationship with the citizenry is what Sir Robert Peel had in mind when he said, “The police are the public, and the public are the police.”

Procedural Justice

Procedural justice and police legitimacy both relate to the creation of a culture of integrity. Adopting procedural justice as the guiding principle for policies and practices can be the underpinning of a change in culture and should also contribute to building trust and confidence in the community. Succinctly put, **procedural justice** revolves around four central principles or pillars:

1. The first pillar of procedural justice is the perception of *fairness to all*. This is not just about outcomes. Citizens will consider the process by which the officer’s decision was made as much as the outcome of a decision—whether the involved parties experienced respectful treatment. If, say, a person deems they were treated fairly and with respect in receiving a traffic ticket, they are much less likely to lodge a complaint against the officer.
2. The second pillar concerns *voice*. All people want to be heard and feel as though they have a measure of control over their fate and feel that their opinions matter.
3. The third pillar, *transparency and openness of process*, means that key decisions are made out in the open and officers are as transparent as possible; then, community members are more likely to accept the outcome, even if unfavorable.
4. The fourth pillar, *impartiality and unbiased decision-making*, means decisions are made based on relevant evidence or data rather than on personal opinion, speculation, or guesswork.³⁶

PRACTITIONER’S PERSPECTIVE

CHIEF OF POLICE



Jeri Williams

Chief of Police with the Oxnard Police Department

Name: Jeri Williams

Position: Chief of Police

Location: Oxnard, California

What do you find to be the most enjoyable aspects of policing? It's the kind of job where I didn't have to do the same thing every day. It was different every single day. I got to help people every single day. What I couldn't believe was that people were paying me money to put bad guys in jail. That blew my mind—who wouldn't want to do this all the time? When it came to promotion, I had some male supervisors who used to say some crazy things about women and females, and they used to tell me that I couldn't do things because I was Black and female. I got promoted anyway. Sometimes the demotivators can be a great motivation.

What advice would you give to someone either wishing to study, or now studying, criminal justice and wanting to become a practitioner in this position? Research your agencies very well and don't just apply any place. You really have to make sure you're a good fit for that agency. We are looking for people who are honest and have integrity, people who are problem-solvers, and people who can properly and actively communicate with people. We've found tremendous success lately hiring people from our own community, which is a double bonus for us because they understand the culture of the city but can also rise to the occasion and pass through all the hoops we have to becoming a police officer. When you're interviewing for a position, be honest and forthright. You have to be able to portray honor and integrity and command presence. We're looking for people who are physically fit and can maintain the stamina of being a police officer. We want to see that you want to be a community servant, to do right by people every day that you go out there.

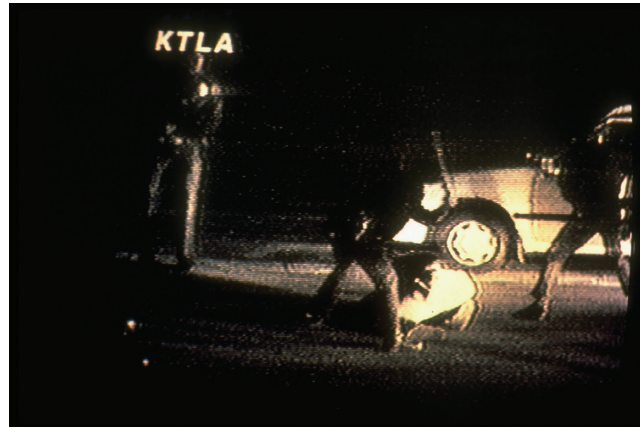
What directions do you envision your department going in the future? Regardless of what is going on in the national agenda with law enforcement, we as police officers remain steadfast in what we've been doing for 100 years, and that's treating people with integrity and respect, really taking the time to listen to people, providing a service that's the platinum standard, as well as taking the bad guys to jail. You can't have one without the other. There are some officers who believe that if they're focused on customer service, then they won't be able to arrest people. We have to be able to walk in tandem and make our arrests and still provide customer service. I think when we as law enforcement believe that and embody that, regardless of what's going on in other places, people will still feel safe and secure in their homes and communities. I know it sounds altruistic to think that, but quite frankly, I think that's why I'm in this profession. I know for a fact that there are 330 other police chiefs in the state of California who think the same way. I would love for the noise going on nationally to diminish. I would love for other police officers to recognize that I don't wear a badge just for the Oxnard Police Department; I wear it for everyone else who has taken an oath to be a peace officer, and that regardless of what's going on, that I stand true to my honor and integrity as a police officer. That's where I'd love for us to be years down the road.

POLICE BRUTALITY

Throughout U.S. history, police agencies have faced allegations of brutality and corruption. In the late 19th century, New York police sergeant Alexander “Clubber” Williams epitomized police brutality, speaking openly of using his nightstick to knock people unconscious, batter them to pieces, or even kill them. Williams openly sought opportunities for graft in an area in downtown New York that was the heart of vice and nightlife, often termed “Satan’s Circus.” This was Williams’s beat, where his reputation for using force and brutality became legendary.

Many people contend there are actually three means by which the police can be “brutal.” There is the literal sense of the term, which involves the physical abuse of others. There is the verbal abuse of citizens, exemplified by slurs or epithets. Finally, for many people who feel downtrodden, the police symbolize brutality because the officers represent the majority group’s law, which serves to keep the underrepresented groups in their place. It is perhaps this last form of police brutality that is of the greatest concern for anyone who is interested in improving community relations. Why? Because it is a philosophy or frame of mind. And it is probably the most difficult to overcome.

Citizens use of the term **police brutality** encompasses a wide range of practices, from the use of profane and abusive language to the actual use of physical force or violence.³⁷ Although no one can deny that some police officers use brutal practices, it is impossible to know with any degree of accuracy how often and to what extent these incidents occur. They are low-visibility acts, and many victims decline to report them. It is doubtful that police brutality will ever disappear forever. There are always going to be, in the words of A. C. Germann, Frank Day, and Robert Gallati, “Neanderthals” who enjoy their absolute control over others and become tyrannical in their arbitrary application of power.³⁸



The 1991 beating of Rodney King by Los Angeles police officer resulted in King's being awarded \$3.8 million for his injuries.

Charles Steiner/Image Works/Time Life Pictures/Getty Images

Going Global 7.1

Police Abuses in India

As many policing problems as might appear to exist in America, they pale in comparison to the methods and problems in many countries. For example, in India the police have long been known as corrupt, brutal, and in need of reform. According to Human Rights Watch, a lengthy succession of governments has failed to rein in police abuses and compel the police to become more professionalized.

Human rights violations are rampant; police routinely employ arbitrary arrest, detention, and torture in order to get confessions, and even murder people who are detained (one was even hanged from a tree inside a police station). People are badly beaten with batons and waterboarded, and officers report being ordered to commit such acts or be jailed or fired from their jobs. Receiving little or no encouragement to collect forensic evidence and witness statements, they instead hold suspects illegally and frequently subject them to torture in order to extract a confession.

Human Rights Watch reports that abysmal conditions for police officers contribute to violations. Often required to be on call 24 hours a day, work long hours, and sometimes live in tents or filthy barracks at the police station, many are separated from their families for long periods of time; they often lack essential vehicles, mobile phones, and investigative tools. Citizens who are most vulnerable include the poor, women, Dalits (the so-called untouchables), and religious and people within the LGBTQ+ communities. Police often fail to investigate crimes against them because of discrimination, the victims' inability to pay bribes, or their lack of social status or political connections. Indians thus avoid contact with the police out of fear, leading to crimes going unreported and unpunished.³⁹

WHEN FAILING THE PUBLIC TRUST: CIVIL LIABILITY

With the possible exception of professionals working in the medical field (and possibly in prisons), no group of workers is arguably more susceptible to litigation and **civil liability** than police employees. Frequently cast into confrontational situations and given the complex nature of their work and

its requisite training needs, they will from time to time act in a manner that evokes public scrutiny, complaints, and calls for financial remuneration to persons who have suffered as a result. As we will see, the price of failure among public servants can be quite high, in both human and financial terms—such as in Baltimore, where the family of Freddie Gray (whose death led to murder and/or assault charges against six police officers in 2015) received \$6.4 million,⁴⁰ and in Cleveland, where the estate of 12-year-old Tamir Rice was awarded \$6 million.⁴¹ Larger cities now spend hundreds of millions of dollars per year on such cases.⁴²

Torts and Negligence

A **tort** is the infliction of some injury on one person by another. Three categories of torts generally cover most of the lawsuits filed against criminal justice practitioners: negligence, intentional torts, and constitutional torts.

Negligence can arise when a criminal justice employee's conduct creates a danger to others. In other words, the employee did not conduct their affairs in a manner so as to avoid subjecting others to a risk of harm and may be held liable for the injuries caused to others.⁴³ Intentional torts occur when an employee engages in a voluntary act that has a substantial likelihood of resulting in injury to another; examples are assault and battery, false arrest and imprisonment, malicious prosecution, and abuse of process. Constitutional torts involve employees' duty to recognize and uphold the constitutional rights, privileges, and immunities of others; violations of these guarantees may subject the employee to a civil suit, most frequently brought in federal court under 42 U.S. Code Section 1983, discussed in the next section.⁴⁴

Assault, battery, false imprisonment, false arrest, invasion of privacy, negligence, defamation, and malicious prosecution are examples of torts that are commonly brought against police officers. **False arrest** is the arrest of a person without probable cause. False imprisonment is the intentional illegal detention of a person; this can occur not only in jail but also whenever someone is confined to a specified area. For example, the police may fail to release an arrested person after a proper bail or bond has been posted, they can delay the arraignment of an arrested person unreasonably, or authorities can fail to release an incarcerated person after they no longer have authority to hold them.

A single act may be a crime as well as a tort. For example, if Officer Smith, in an unprovoked attack, injures Jones, the state will attempt to punish Smith in a criminal action by sending him to jail or prison, fining him, or both. The state would have the burden of proof at criminal trial, having to prove Smith guilty "beyond a reasonable doubt." Furthermore, Jones may sue Smith for money damages in a civil action for the personal injury he suffered. In this civil suit, Jones would have the burden of proving Smith's acts were tortious by a "preponderance of the evidence"—a lower standard than that in a criminal court and thus easier to satisfy.

Section 1983 Legislation

The primary civil instrument that can be used against the police is **Section 1983**: a portion of the U.S. Code that allows a legal action to be brought against a police officer or other person in position of authority who, it is believed, used their position ("acted under color of law") to violate one's civil rights. Following the Civil War and in reaction to the activities of the Ku Klux Klan, Congress enacted the Ku Klux Klan Act of 1871, later codified as U.S. Code, Title 42, Section 1983. It states that

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

A trend is for such litigants to cast a wide net in their lawsuits, suing not only the principal actors in the incident, but agency administrators and supervisors as well. This breadth of suing represents the notion of **vicarious liability**, or the doctrine of **respondeat superior**, an old legal maxim meaning "let the master answer." In sum, an employer can be found liable in certain instances for wrongful acts of the employee.

Police supervisors have also been found liable for injuries arising out of an official policy or custom of their department. Injuries resulting from a chief's verbal or written support of heavy-handed behavior resulting in the use of excessive force by officers have resulted in such liability.⁴⁵

Potential Areas of Liability

To help readers to conceptualize what is meant by police civil liability, the following sections discuss some general areas in which police liability may be found.

Proximate Cause

Proximate cause is basically something that causes an event, particularly an injury, due to negligence or an intentional wrongful act. In other words, the injury caused would not have occurred but for the cause. As an example, it is established by asking, "But for the officer's conduct, would someone have been injured or killed?" If the answer to this question is no, then proximate cause is established, and the officer can be held liable for the damage or injury. An example is where an officer is inappropriately and negligently involved in a high-speed chase and the fleeing driver strikes an innocent third party.⁴⁶ Proximate cause also may be found when an officer who leaves the scene of an accident is aware of dangerous conditions (e.g., spilled oil, smoke, vehicle debris, stray animals) and does not give proper warning to motorists.⁴⁷

Persons in Custody and Safe Facilities

Courts generally rule that police officers have a **duty of care** to persons in their custody, including a legal responsibility to take reasonable precautions to keep detainees free from harm, to render medical assistance when necessary, and to treat detainees humanely.⁴⁸ This duty, however, typically does not include self-inflicted injury or suicide because these acts are generally considered to result from the detainee's own intentional conduct.⁴⁹ However, if an incarcerated person's suicide is "reasonably foreseeable" from their actions or statements, then the jailer has a duty of care to help prevent that suicide.

Police also need to provide safe facilities. For example, the construction of a Detroit jail's holding cell did not allow officers to observe detainees' movements; there were no electronic monitoring devices for observing detainees, and there was an absence of detoxification cells required under state department of corrections rules. Therefore, following a suicide in this facility, the court held that these building defects contributed to the detainee's death.⁵⁰

Failure to Protect

This form of negligence may occur if a police officer fails to protect a person from a known and foreseeable danger. Claims of **failure to protect** most often involve battered women. However, police informants, witnesses, and other people dependent on the police can be a source of police liability if an officer fails to take reasonable action to prevent them from being victimized (see the "You Be the . . . Judge" box).

Case Study 7.3

Use of Force With the Mentally Ill

A Black male, Pickett, age 29 and a former engineering student, was walking to his motel shortly after 9 p.m. when a sheriff's deputy saw him; exiting his cruiser, the deputy approached him and demanded his name and age. Pickett complied and then did everything asked of him. But when asked if he lived at the motel and where he was from, Pickett said he didn't know. The deputy would later state under oath that he knew he had no probable cause to arrest Pickett and that he had the right to walk away. But when Pickett tried to do so, the deputy grabbed him and told him to "stop resisting" and threatened to use an electronic control device on him. Pickett put his arms up and was running toward his room when he tripped and fell; the two scuffled, and the deputy punched Pickett 15 to 20 times before pulling out his service weapon and threatening to shoot him. He then fired, hitting Pickett twice in the chest; Pickett died at the scene. The deputy, who

was also Black and had worked on patrol assignment for just a few months, said he shot Pickett because he feared for his life.

Later, the deputy also said he stopped Pickett after seeing him hop the motel fence, thinking he was trespassing, and that he was fidgety, like he might be under the influence (Pickett did have marijuana in his system, and his blood alcohol level was 0.01%, far below the level of legal intoxication).

The deputy never faced criminal charges in Pickett's death (the district attorney determining that the shooting was justified), but his family filed civil charges. At the civil trial, the deputy changed his story, saying he never saw Pickett jump over the fence and the gate actually was open. He also said it never occurred to him that Pickett could be mentally ill (Pickett was officially diagnosed with mental illness years earlier). An expert witness, a former Los Angeles Police Department officer, said the deputy's use of force was "unnecessary and unreasonable" and was probably "one of the worst cases I have looked at because of the mental health component."⁵¹

Questions for Discussion

1. Did the deputy have a legal right to detain Pickett?
2. Did the deputy use reasonable force against Pickett?
3. If you were a member of the jury at civil trial, would you award Pickett's family financial compensation for his death? If so, what do you believe would be the appropriate amount?

To learn the *outcome* of this incident's ensuing civil trial, see the endnote.

Vehicle Pursuits

Vehicle pursuits are of great concern because they involve tremendous potential for injury, property damage, and liability. As one police manual describes it, "The decision by a police officer to pursue a citizen in a motor vehicle is among the most critical that can be made,"⁵² putting innocent third parties—other drivers and bystanders—at risk. Police policy and procedure manuals are very thorough where pursuits are concerned, and they typically order the supervisor to shut down the pursuit unless there is probable cause to believe the suspect presents a clear and immediate threat to the safety of others or has committed or is attempting to commit a violent felony.

YOU BE THE . . . JUDGE

What, if any, legal obligation is held by the police to protect someone from their estranged spouse who has been served with a legal restraining order? That question was at the crux of a lawsuit from Castle Rock, Colorado, which was ultimately heard by the U.S. Supreme Court. Jessica Gonzales's restraining order required her husband to remain at least 100 yards from her and their three daughters except during specified visitation times. One evening the husband took possession of the three children in violation of the order; Mrs. Gonzales repeatedly urged the police to search for and arrest her husband, but they took no immediate action (due to her having allowed her husband to take the children at various hours). At approximately 3:20 a.m., the husband appeared at the city police station and instigated a shoot-out with the police (he died). A search of his vehicle revealed the corpses of the three daughters, whom the husband had killed prior to his arrival. U.S. cities are generally immune from lawsuits, so in this case, the Supreme Court was asked to decide whether Jessica Gonzales could sue the city because of inaction by its police officers.

1. Were the police *morally* responsible for the deaths of the three girls?
2. Were the police *legally* responsible for their deaths?
3. If you believe Gonzales should be allowed to sue the city and the police were liable, how much financial compensation should she receive?

See the Notes section at the end of the book for the outcome and whether or not the city was deemed as liable for its police department's actions.⁵³

IN A NUTSHELL

- The number of police shootings involving unarmed POC in recent years resulted in widespread calls for a decline in public support, reform, a national task force study, demands for better recordkeeping of such shootings, modified police training and related legislation, the use of body-worn cameras by police, lawsuits due to federal officer deployment in cities during protests, reduction or elimination of qualified immunity, and greater demands for transparency and less militarization of police.
- The current state of the relations between police and marginalized communities may be dire, but several approaches—including constitutional policing, procedural justice, and greater transparency—if adopted, can serve to change the mindset of police and bridge the gap with the community.
- Historically, three forms of police brutality have been recognized: the physical abuse of others, the verbal abuse of citizens, and officers representing the majority group's law.
- The specter of civil liability looms large over police work. Often being in confrontational situations, police officers may from time to time act in a manner that evokes public scrutiny and complaints. They and their superiors may be sued for a variety of reasons if a citizen believes their rights were violated; the primary civil instrument that can be used against the police is Section 1983.
- The several areas of potential liability for police include proximate cause, holding persons in custody, failure to protect, and vehicle pursuits.

KEY TERMS

Civil liability (p. 163)	Procedural justice (p. 161)
Constitutional policing (p. 160)	Proximate cause (p. 165)
Duty of care (p. 165)	Qualified immunity (p. 158)
Failure to protect (p. 165)	Respondeat superior (p. 164)
False arrest (p. 164)	Section 1983 (p. 164)
Legitimacy (of police) (p. 161)	Tort (p. 164)
Negligence (p. 164)	Use of force (p. 159)
Police brutality (p. 163)	Vicarious liability (p. 164)

REVIEW QUESTIONS

1. What were some international reactions to George Floyd's death?
2. How would you characterize public opinion toward protesters, police, and police reform since Floyd's death?
3. What specific police reforms are most strongly favored by the public, and what are some obstacles to their being realized?
4. What are some examples of legislative action taken by government entities to effect, to some extent, police reform in their jurisdiction?
5. Why are the deployment of federal officers and the use of military gear in local communities both controversial practices? What are some arguments for their use?
6. How would you describe the "sacred trust" that is given the police in terms of the use of force?
7. What kinds of problems have arisen in recent years regarding police use of force, and what approaches and philosophies might police adopt in order to bridge the chasm that now exists in many communities as a result of that use of force?

8. What are the types of police brutality? Which one is most problematic for the police?
9. How would you define U.S. Code, Title 42, Section 1983? How is it applied?
10. What is meant by duty of care and failure to protect, and what are some examples as these concepts apply to police supervisors and officers?

LEARN BY DOING

1. In the past 6 months, there has been a spike in the number of citizen complaints in your community alleging inappropriate use of force by police against POC. Local-interest groups and churches are demanding data concerning police use of force as well as a review of policies regarding same. As your police department's community liaison, you are asked to respond to these demands. What approaches will you take?
2. If you meet the academic qualifications, you could enroll in a university-sponsored internship with one of those agencies or offer to volunteer your time there (be forewarned, however, that doing so also requires a commitment of time and effort by the agencies as well as a thorough and lengthy background check prior to your being accepted). Your time would be well spent examining policy and procedure manual (use of force policy in particular) and other matters relating to this chapter. Alternatively, you may be able to access these agency materials online.



Photo by Gilles Mingasson/Getty Images

8

EXPOUNDING THE CONSTITUTION

Laws of Arrest, Search, and Seizure

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 8.1** Explain the policies and procedures defined by the Fourth Amendment and provide examples as they relate to probable cause, the exclusionary rule, warrants, and electronic surveillance.
- 8.2** Discuss some significant ways in which the *Miranda* decision has been eroded.
- 8.3** Describe what rights are held by criminal defendants regarding the right to counsel, for both felony and misdemeanor arrests.

ASSESS YOUR AWARENESS

Test your knowledge of your constitutional rights regarding arrest, search, and seizure by responding to the following seven true–false items; check your answers after reading this chapter.

1. The standard for a legal arrest, search, and seizure is probable cause.
2. The exclusionary rule requires that evidence obtained by police in violation of the Fourth Amendment must *not* be used against the defendant in a criminal trial.
3. There are essentially two ways for the police to make an arrest: with a warrant and without a warrant.
4. The courts grant police greater latitude in searching automobiles, which can be used to help make a getaway and to hide evidence.
5. The *Miranda* warning remains intact from its original version; no deviations in its explanation or practice by police are permitted.
6. Generally, police do not have to “search” for things they see in plain view.
7. The Sixth Amendment guarantees the right to a speedy and public trial, as well as the assistance of counsel to those accused of crimes by our justice system.

Answers can be found on page 401.

As will be seen in this chapter, U.S. citizens have a powerful weapon against overbroad government intrusion into their lives: the Fourth Amendment to the U.S. Constitution, which protects against unreasonable searches and seizures of “persons, houses, papers and effects.” However, the U.S. Supreme Court has held that police officers do not need a warrant to enter a home when they are in “hot pursuit” of a fleeing felon (what are termed exigent circumstances, or instances where quick, emergency action is required in order to prevent imminent injury, the destruction of evidence, or a felony suspect’s escape). But what about when the crime in question is a misdemeanor? For instance, a California state trooper followed a man, Lange, who was driving his car and playing loud music and occasionally honking the car horn. Upon arriving at his home, Lange drove into his garage, and very soon after, the trooper followed him inside the garage on foot. Lange was found to be intoxicated and was arrested—and later convicted—for the misdemeanor offense of driving under the influence. On appeal, Lange argued the trooper’s entry into his home was an unreasonable search and seizure.¹

Did the trooper have the right to enter Lange’s garage without a search warrant? Does the “exigent circumstances” exception apply when one is suspected of only a misdemeanor offense? Who should prevail in this case, Lange or the state of California?

Think about these questions as you read further and learn about the critically important area of constitutional law in the criminal justice system. (The outcome of the *Lange* case is provided in the endnote.)

INTRODUCTION

What constitutional rights do Americans possess regarding arrest, search, and seizure? How are the police constrained by those rights? If the police have a search warrant for a friend you are accompanying, may they search you as well? If the police knock on your apartment door, must you allow them to enter if you do not see a search warrant in their possession? And if they arrest you, should they be able to search your person, your car, your apartment—your cell phone? These are challenging questions if someone is not familiar with the Bill of Rights. After you read this chapter, however, the answers should be clear.

Most college and university students probably have few opportunities to witness police actions that concern the U.S. Constitution. Although they may become directly and innocently involved with arrest, search, and seizure by being present at parties, in friends' vehicles, or at their places of employment, most Americans' knowledge of the Bill of Rights probably comes from movies and television crime shows—which are questionable at best in terms of how they portray police conduct. This chapter will clarify any such confusion.

We focus in this chapter on three of the 10 amendments that constitute the Bill of Rights: the Fourth Amendment (probable cause, the exclusionary rule, arrest, search and seizure, electronic surveillance, and lineups), the Fifth Amendment (confessions and interrogations), and the Sixth Amendment (right to counsel and interrogation). Chapter 9 covers the Eighth Amendment, prohibiting cruel and unusual punishment; furthermore, Chapter 1 covers the concept of due process, which is guaranteed by the Fourteenth Amendment. As such, these two amendments are not examined in detail in this chapter. Also note that the law as it pertains to juvenile offenders is quite different from that for adults; juvenile law is covered in Chapter 15.

Some Caveats

Students of criminal justice might do well to remember the classic words of John Adams, who said in 1774 that a republic is “a government of laws, and not of men.”² The Bill of Rights was enacted largely to protect all citizens from excessive governmental power.

As was seen in previous chapters of this book, criminal justice practitioners have far-reaching powers. Furthermore, agencies of criminal justice have the added benefit of using expert witnesses, forensic crime laboratories, undercover agents, informants, and so forth. Therefore, the Bill of Rights serves as an important means of “balancing the scales”—controlling the police and others so they conduct themselves in a manner suited to a democratic society. Criminal justice professionals must conform their behavior to the rule of law as set forth not only in the U.S. Constitution but also in the state constitutions, statutes enacted by state legislatures, municipal ordinances, and the precedent of prior interpretations by the courts.

Remember also the law is *dynamic*—that is, constantly changing—by virtue of acts by federal and state courts as well as their legislative bodies. Therefore, criminal justice practitioners must stay abreast of such changes and have formal mechanisms for imparting these legal changes to their employees. In the best case, agencies will have an in-house assistant district attorney—or, at the least, one who is on call—to render advice concerning legal matters.

A final note: Anyone who believes our legal system to be unduly harsh and restrictive might wish to investigate police tactics in other nations. Remember that governments—through their criminal justice systems (and, too often, their military forces)—may employ many methods to maintain order and attempt to maintain “justice.” In Saudi Arabia or China, however, the methods used would be far different from those in the United States. But would “justice” really result? And would many Americans want to *live* in one of those venues?

THE FOURTH AMENDMENT

The right of the people to be secure in their persons, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The **Fourth Amendment** is intended to limit overzealous behavior by the police. Its primary protection is the requirement that a neutral, detached magistrate, rather than a police officer, issue an **arrest warrant** and/or a **search warrant**. The all-important principle of separation of powers in our American government demands the legal right to search be decided by someone other than an agent for the police because the police are not expected to be neutral or objective with respect to police matters. Instead, a neutral judicial officer oversees this important police function—the judicial branch oversees the executive branch to ensure law enforcement actions are constitutional.³

Probable Cause

The standard for a legal arrest, as well as for **search and seizure**, is **probable cause**. This important concept is elusive at best; it is often quite difficult for professors to explain and even more difficult for students to understand. One way to define probable cause is to say that for an officer to make an arrest or conduct a search of someone's person or effects, the officer must have a reasonable basis to believe a crime has been or is about to be committed by that individual (which, in the case of a search, can include the individual's mere possession of some form of illegal contraband).

That definition still may not help much to explain this concept. However, if you read carefully the example provided in the accompanying Case Study 8.1 (which is based on an actual case), you should have a better understanding of this concept—and how it is applied in the field.

Of course, the facts and probable cause indicators of each case are different. The court will examine the type and amount of probable cause the police officer had, but the officer cannot add to the probable cause used to make an arrest *after* making the arrest. The judge will then determine whether or not sufficient probable cause existed to arrest the individual based on the officer's knowledge of the facts *at the time of* the arrest.

The U.S. Supreme Court has upheld convictions when probable cause was provided by a reliable informant,⁴ when it came in an anonymous letter,⁵ and when a suspect fit a Drug Enforcement Administration profile of a drug courier.⁶

Case Study 8.1

Probable Cause

At midnight, a 55-year-old woman, having spent several hours at a city bar, wished to leave the bar and go to a nightclub in a rural part of the county. A man offered her a ride, but rather than driving directly to the nightclub, he drove to a remote place and parked the car. There, he raped the woman and forced her to sodomize him. She fought him and later told the police she thought she had broken the stems (side pieces) of his black glasses. After the assault, he drove her back to town; when she got out of the car, she saw the license plate number and thought the hood of the car was colored red. Her account of the crime and her physical description of the alleged rapist led the officers to have a suspect in mind, so they immediately conducted a photograph lineup with the victim. A known rape/sodomy suspect's picture was shown to her (along with those of several other men who were of similar physical description) in a photo lineup. She tentatively identified the suspect in the mug shot, but she was not absolutely certain (the suspect's mug shot had been taken several years earlier).

With this information and without an arrest or search warrant, two police officers hurried to the suspect's home to question him. Upon entering the suspect's driveway, the officers observed a

beige car—but it had a red hood; next, the officers noted the vehicle’s license number matched the one given by the victim; finally, as the suspect came out of the home, the officers observed that the front of his eyeglasses frame was black plastic, but the side pieces (temples) were gold-colored metal.

1. Upon entering the suspect’s driveway, what observations did the officers make that might lead “a reasonable person” to believe the suspect had committed the offenses?
2. Do the officers have enough probable cause to make a warrantless arrest of the individual?
3. Is there anything else they could legally do to further establish the suspect’s guilt (such as a live, in-person lineup, as discussed later in the chapter)?

The Exclusionary Rule

As already mentioned, the Fourth Amendment protects people’s right to be secure against unreasonable searches and seizures in their houses, papers, and effects. However, simple as that may sound, the manner in which the amendment is applied on the street is more complicated. First of all, not *all* searches are prohibited—only those that are unreasonable. Another issue has to do with how to handle evidence obtained illegally. Should murderers be released, Justice Benjamin Cardozo asked, simply because “the constable blundered”?⁷ The Fourth Amendment says nothing about how it is to be enforced; this is a problem that has stirred a good amount of debate for a number of years. Most of this debate has focused on the constitutional necessity for the **exclusionary rule**, which basically requires that all evidence obtained in violation of the Fourth Amendment must be excluded from government use in a criminal trial.

The exclusionary rule first appeared in the federal criminal justice system when the U.S. Supreme Court ruled in *Weeks v. United States* (1914) that all illegally obtained evidence was barred from use in federal prosecutions.⁸ Then in *Mapp v. Ohio* (1961), the Court applied the doctrine to the states’ courts.⁹ In May 1957, three Cleveland police officers went to the home of Dollree Mapp to investigate intelligence suggesting the owner was hiding a recent bombing suspect and engaged in an illegal gambling operation. Mapp, after telephoning her lawyer, refused the police entry without a search warrant. Mapp



The exclusionary rule requires that evidence obtained improperly by the police must not be used in a criminal trial. These two officers wait outside a jewelry store for a search warrant to be signed by a judge so they may then search the property for stolen goods.

AP Photo/Greg Barnette/Record Searchlight

refused entry again 3 hours later, but police forcibly entered the home. Mapp demanded to see a search warrant; an officer waved a piece of paper at her, which she grabbed and placed down her shirt. The officers struggled with Mapp to retrieve the piece of paper, at which time Mapp's attorney arrived at the scene. The attorney was not allowed to enter the house or to see his client. One officer searched her upstairs bedroom and found a brown paper bag containing books he deemed to be obscene. A jury convicted Mapp of possession of obscene, lewd, or lascivious materials, and she was sentenced to an indefinite term in prison. In June 1961, the U.S. Supreme Court overturned the conviction, holding that the Fourth Amendment's prohibition against unreasonable search and seizure had been violated and that as

the right to be secure against rude invasions of privacy by state officer is . . . constitutional in origin, we can no longer permit that right to remain an empty promise. We can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment.¹⁰

Although the exclusionary rule continues to safeguard citizens against unreasonable search and seizure, a 2016 U.S. Supreme Court decision limited the scope of this protection, particularly for those who have outstanding arrest warrants. Acting on an anonymous tip, Utah detective Douglas Fackrell observed Edward Joseph Strieff Jr. leaving a residence where drug sales were suspected. Without sufficient evidence, Detective Fackrell illegally stopped Strieff for questioning. During the stop, Fackrell discovered that Strieff had an outstanding warrant and arrested him. Fackrell conducted a lawful search following the arrest and found Strieff was carrying a drug pipe and methamphetamine. In a 5–3 decision,¹¹ the U.S. Supreme Court ruled that, even though the initial investigatory stop was unconstitutional, exclusion of the evidence obtained during the search incident to arrest was not justified and the items found during the search could be lawfully considered as evidence for trial since the defendant had an outstanding warrant, which led directly to the subsequent arrest and search.

Arrests With and Without a Warrant

It is always best for a police officer to arrest someone with a warrant—especially where suspects' private homes are involved—because that means a neutral magistrate, rather than a police officer, has examined the facts and determined the individual should be arrested in order to make an accounting of the charge(s). An arrest made with a valid warrant will be presumed constitutional or legal, so an officer will always opt to act with a warrant when possible.

To obtain an arrest warrant, the officer or a citizen swears in an **affidavit** (as an “affiant”) they possess certain knowledge that a particular person has committed an offense. This person might be, as an example, a private citizen who informs police or the district attorney that they attended a party at a residence where drugs or stolen articles were present. Or, as is often the case, a detective gathers physical evidence or interviews witnesses or victims and determines probable cause exists to believe that a particular person committed a specific crime. In either case, the affidavit is presented to a judge, and if the judge finds probable cause exists, the judge will issue the arrest warrant. Officers will execute the warrant, taking the suspect into custody to answer the charges.

Furthermore, the Supreme Court has held that police may not make “a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest” except where there are **exigent circumstances**.¹² Exceptions made based on exigent circumstances apply only when the officer possesses probable cause and immediate action is required—to prevent danger to life or serious damage to property, the escape of a suspect, the destruction of evidence, or some other such action.¹³

Note, however, that in a 2021 decision, where a state trooper followed a man for playing loud music and honking his car horn and then followed him on foot into his garage and arrested him for driving under the influence, the Court said such pursuit and warrantless arrest for a *misdemeanor* offense was invalid. In its decision, the Court held that pursuit of a fleeing misdemeanor suspect does not categorically qualify as an exigent circumstance that justifies a warrantless entry into a home.¹⁴

Patrol officers, unlike detectives, rarely have the time or opportunity to perform an arrest with a warrant in hand because the suspect is generally trying to escape, dispose of evidence, and so on. Although the situation described in the accompanying “You Be the . . . Police Officer” box involves consent to search, it serves as a good example.

YOU BE THE . . . POLICE OFFICER

One spring afternoon, a police officer was dispatched to the residence of several university students, who were hosting a keg party for about 20 guests. They reported that three unknown men (two white, one African American) entered the home, had a few beers, and quickly left. Soon thereafter, a party guest also left and discovered the stereo had been taken from his car, parked in the backyard. A description of the men and their vehicle was given to the officer, who soon (within 20 minutes and a mile from the crime scene) observed a vehicle and three men, all of whom matched the description that was given. The officer stopped the vehicle, informed the dispatcher of the stop and location, and approached the vehicle.

1. Are exigent circumstances and probable cause sufficient for the officer to search the vehicle without a warrant or the men's consent? If you believe not, how do you propose the three men be handled while a warrant is sought from a judge?
2. Assume the officer asks the vehicle's driver for permission to search the vehicle and consent is given; what is the officer's next move? Instead, assume the driver of the vehicle refuses to give the officer permission to search the vehicle; what action(s) do you believe the officer can then legally take?
3. Assume the officer, with or without a warrant, locates the stolen stereo equipment inside the vehicle under the driver's seat. Can the officer then arrest only the vehicle's driver, or should all other occupants be arrested as well?
4. Following the arrest of one or more of the occupants, can they then be searched (if necessary, see the "Searches Incident to Lawful Arrest" section later in this chapter)?
5. What other issues arise for the officer (e.g., their safety) once an arrest is made of one or more of the occupants?

Police may not randomly stop a vehicle to spot-check the driver's license and registration; to do so, they must at a minimum possess articulable, reasonable suspicion (e.g., that a motorist is unlicensed, the automobile is not registered, or the vehicle or an occupant is subject to arrest for violation of law).¹⁵ However, the Supreme Court ruled in 1990 that the stopping of all vehicles passing through sobriety checkpoints—a form of seizure—did not violate the Constitution, although singling out individual vehicles for random stops without probable cause is not authorized.¹⁶ Several days later, it ruled the police were not required to give drunk-driving suspects a *Miranda* warning and could videotape their responses.¹⁷ The Supreme Court held also that police may arrest *everyone* in a vehicle in which drugs are found¹⁸ and that police may set up roadblocks to collect information from motorists about a crime. Short stops, "a very few minutes at most," are not too intrusive, considering the value in crime solving, the Court noted.¹⁹



The U.S. Supreme Court has ruled that the stopping of all vehicles passing through sobriety checkpoints—a form of seizure—does not violate the Constitution.

AP Photo/Susan Montoya Bryan

Search and Seizure With and Without a Warrant

An old saying holds that "a person's home is his castle," and the police are held to a high Fourth Amendment standard when wanting to enter and search someone's domicile. Regarding what have become known as "knock and announce" cases, the U.S. Supreme Court has determined that the Fourth Amendment requires the police to first knock and announce their presence before entering a person's home for the purpose of executing a warrant; the Court allows exceptions, however, if knocking and announcing would be likely to endanger the officers or lead to the destruction of evidence. In

mid-2011, the Supreme Court expanded the ability of police to enter a home without a warrant—but under exigent circumstances. In *Kentucky v. King*, police in Lexington were pursuing a drug suspect and banged on the door of an apartment where they thought they smelled marijuana.²⁰ After identifying themselves, the officers heard movement inside the apartment and, suspecting the evidence was being destroyed, kicked in the door and found King smoking marijuana. King, convicted of multiple drug crimes, appealed, and Kentucky’s highest court ruled there were no “emergency circumstances” present, and thus the drugs were inadmissible because police should have sought a search warrant. The Supreme Court disagreed, saying the police acted reasonably: When police knock on a door and there is no response and then hear movement inside that suggests evidence is being destroyed, they are justified in breaking in.

In other Fourth Amendment cases, the Court has upheld a warrantless search and seizure of garbage in bags outside the defendant’s home,²¹ as well as approaching seated bus passengers and asking permission to search their luggage for drugs (because, they reasoned, such persons should feel free to refuse the officer’s request).²² The Court also decided that no “seizure” occurs (and therefore the Fourth Amendment does not apply) when a police officer is in a foot pursuit (here, a juvenile being chased by an officer threw down an object, later determined to be crack cocaine).²³

As with arrests, the best means by which the police can search a person or premises is with a search warrant that has been issued by a neutral magistrate. A warrant will be issued only if a judge finds, after reviewing a police officer’s sworn affidavit, that there is probable cause to believe the named person possesses sought-after evidence (e.g., a weapon or stolen goods) or that the evidence is present at a particular location. Again, as with an arrest with a warrant, typically it is the detectives who have the “luxury” of searching and seizing with a warrant after interviewing victims and witnesses, perhaps obtaining analyses at a forensics laboratory, and gathering enough available evidence to request a search warrant. Figure 8.1 shows the pertinent parts of a search and seizure warrant form for persons or property that is used by the U.S. district courts, for execution by agents of the federal government.

Five types of searches may be conducted without a warrant: (1) searches incident to lawful arrest, (2) searches during field interrogation (stop-and-frisk searches), (3) searches of automobiles under special conditions, (4) seizures of evidence that is in “plain view,” and (5) searches when consent is given.

Searches Incident to Lawful Arrest

In *Chimel v. California* (1969), officers arrested Chimel without a warrant in one room of his house and then searched his entire three-bedroom house, including the garage, attic, and workshop. The U.S. Supreme Court said that searches incident to a lawful arrest are limited to the area within the arrestee’s immediate control or the area from which they might obtain a weapon, emphasizing that such searches are justified in large part to ensure officer safety. Therefore, if the police are holding a person in one room of the house, they cannot search and seize property in another part of the house, away from the arrestee’s immediate physical presence.²⁴

Another advantage given the police was the Court’s allowing a warrantless, in-home “protective sweep” of the area in which a suspect is arrested to reveal the presence of anyone else who might pose a danger. Such a search, if justified by the circumstances, is not a full search of the premises and may include only a cursory inspection of those spaces where a person could be hiding.²⁵ In April 2009, the Supreme Court held in *Arizona v. Gant* that, when an individual has been arrested and is in police custody away from their vehicle, unable to access the vehicle, officers may not then search the vehicle without a warrant. Here, the officers did so and discovered a handgun and a plastic bag of cocaine; the Court overturned nearly 3 decades of such a police practice, saying it is a violation of the Fourth Amendment’s protection against unreasonable searches and seizures.²⁶ In essence, the Court is saying the police may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only if it is reasonable to believe the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

FIGURE 8.1 ■ Federal Court Search and Seizure Warrant Form, U.S. District Courts

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*

)
)
)
)
)
)

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized):*

YOU ARE COMMANDED to execute this warrant on or before _____ *(not to exceed 14 days)*

☐ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

☐ for _____ days *(not to exceed 30)* ☐ until, the facts justifying, the later specific date of _____ .

Date and time issued: _____

_____ *Judge's signature*

City and state: _____

_____ *Printed name and title*

AO 93 (Rev. 11/13) Search and Seizure Warrant (Page 2)

Return		
Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of:		
Inventory of the property taken and name of any person(s) seized:		
Certification		
<p>I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.</p>		
Date: _____	_____ <i>Executing officer's signature</i>	
	_____ <i>Printed name and title</i>	

Print

Save As...

Reset

Finally, in mid-2013, in a decision that Justice Samuel Alito described as “the most important criminal procedure case this court has heard in decades,” the Supreme Court held in *Maryland v. King* that police can collect DNA from people arrested but not yet convicted. The majority compared taking a DNA swab to fingerprinting, viewing it as a reasonable search that can be considered a routine part of a booking procedure.²⁷

PRACTITIONER'S PERSPECTIVE

SPECIAL AGENT



Name: Dan Burke

Position: Special Agent, Food and Drug Administration's Office of Criminal Investigations

What is your career story? I started off doing internships. That's the best advice I can give college students: Get in there, get internships, and get to know someone. I was lucky in that I got the job right out of college, but I did a co-op. That's when the government gives you a paid internship, and after you graduate, they agree to hire you as an agent. I came on as an agent in the Treasury Department, and from there, I worked my way up.

What are some challenges and misconceptions you face in this position? There are a lot of challenges when it comes to law enforcement, and particularly federal law enforcement. You're dealing with crimes that are national, and oftentimes international in scope, and when you're dealing with that, you have to deal with a lot of different jurisdictions and laws, so it takes a while to understand the nuances of the jurisdictions you're working in. The investigations also tend to take a lot longer.

The internet is also a big challenge. It's the digital, cyber Wild West, and it takes a lot of training and experience to understand how to investigate in that environment. But at the end of the day, it's satisfying when the long arm of the law can reach beyond your borders and reach through your screen. I've had cases where I never really had to get up from my desk; I was able to do almost the entire cases sitting in front of the computer.

Some of the myths definitely do come from television. Cases are not made in hour- or half-hour-long segments. I've spent days and weeks on surveillance. Wire taps are not easy to get, contrary to popular belief, and they're very expensive. In general, managers don't like you spending a lot of money to pursue an investigation. It's difficult to write up a search warrant. You have to spend time on that, and you can't just go kicking in doors.

What role does diversity play in this position? In my career in federal law enforcement, I've arrested doctors, lawyers, even a CEO of a major corporation. So those cases can be quite interesting and challenging. You just never know how someone of that high status who's put a lot of their life into their career is going to react when it all comes tumbling down when I come through the door.

with an arrest warrant or search warrant. I've also been party to arrests involving religious people, and those are very sensitive circumstances. One thing I have learned is that it really runs the gamut in terms of the diversity of people who choose to commit crimes.

What directions do you envision your department going in the future? I think there definitely is a future in law enforcement. It's a frustrating job, and students need to know that going into it. You're not always going to be thought of as the good guy. What you do are controversial things; you serve subpoenas and search warrants, you arrest people. That's sometimes difficult to understand and get your head around. There will always be positions because there will always be crime. So job security-wise, you're going to be okay. But you have to understand what you're going to be doing. You're putting yourself out there as the tip of the spear, if you will. You're that line between the good guys and the bad guys, and you have to make sure you stay on the good side of that line. You have to try to do the right thing at all times, even if that means losing a case, even if that means the bad guy is going to walk.

Case Study 8.2

Searches Incidental to Lawful Arrest: David Riley's Cell Phone

A San Diego police officer pulled over David Riley in his car for having expired registration; finding Riley's driver's license was suspended, he searched the car incidental to lawful arrest and found two illegal handguns under the hood, for which Riley was arrested. Next, searching Riley's person, the officer found his cell phone in a pocket; the phone contained evidence—pictures, cell phone contacts, texts messages, and video clips—of Riley's membership in a local gang and a picture of a vehicle Riley had owned that had been involved in a gang shooting. Based in part on the evidence recovered from his cell phone, Riley was convicted for his involvement with a gang shooting.

Did Riley have an expectation of privacy concerning his cell phone and its contents? If you believe he did, would his crimes change those expectations? Did the police have a legitimate, overriding interest in seizing evidence from his phone? Should the government be able to use personal cell phone evidence against suspects in criminal trials?

In 2014, the U.S. Supreme Court agreed with Riley's attorneys that the police search of Riley's cell phone was illegal. Speaking for the majority, Chief Justice John Roberts wrote,

Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one. Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life.” The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought.²⁸

Stop and Frisk

In 1963, Cleveland detective McFadden, a veteran of 19 years of police service, first noticed Terry and another man who appeared to be “casing” a retail store. McFadden observed the suspects making several trips down the street, stopping at a store window, walking about a half block, turning around, and walking back again, pausing to look inside the same store window. At one point, they were joined by a third party, who spoke with them and then moved on. McFadden claimed he followed them because he believed it was his duty as a police officer to investigate the matter further.

Soon, the two rejoined the third man; at that point, McFadden decided the situation demanded direct action. The officer approached the subjects and identified himself, then requested the men identify themselves as well. When Terry said something inaudible, McFadden “spun him around so that they were facing the other two, with Terry between McFadden and the others, and patted down the

outside of his clothing.” In a breast pocket of Terry’s overcoat, the officer felt a pistol. McFadden found another pistol on one of the other men. The two men were arrested and ultimately convicted for concealing deadly weapons. Terry appealed on the grounds that the search was illegal and the evidence should have been suppressed at trial.

The U.S. Supreme Court disagreed with Terry, holding in *Terry v. Ohio* that the police have the authority to detain a person briefly for questioning even without probable cause if they have “reasonable suspicion” the person has committed a crime or is about to commit a crime. Reasonable suspicion is a lower standard than probable cause but more than a mere hunch that someone may be involved in criminal activity. Officers must be able to articulate a reasonable, factual basis for a stop. Such detention—known as a **Terry stop**—does not constitute an arrest, and a person may be frisked for a weapon if an officer reasonably suspects the person is carrying one and fears for their life. The *Terry* decision ushered in a new era for police officers, allowing them to stop and frisk suspects based only on reasonable suspicion and not the higher threshold of suspicion required under a probable cause standard.²⁹

An important extension of the *Terry* doctrine—known as the “plain feel” doctrine—was handed down in 1993 in *Minnesota v. Dickerson*, in which a police officer observed a man leave a notorious crack house and then try to evade the officer.³⁰ The man was eventually stopped and patted down, or frisked, during which time the officer felt a small lump in the man’s front pocket that was suspected to be drugs. The officer removed the object—crack cocaine wrapped in a cellophane container—from the man’s pocket. Although the arrest and conviction were later thrown out as not being allowed under *Terry*, the Court also allowed such seizures in the future when officers’ probable cause is established by the sense of touch.



Studies have shown that stop-and-frisk tactics alone do not reduce crime in high-crime areas. Rather, deployment of extra police in such areas contributes far more to such efforts.

AP Photo/Ross D. Franklin, File

Case Study 8.3

NYPD Stop and Frisk: Is It Racial Profiling? Does It Reduce Crime?

In the early 1990s, the New York Police Department (NYPD), like most large, metropolitan forces, began taking a proactive approach to fighting crime. A centerpiece of the department’s approach was an aggressive stop-and-frisk policy by which officers targeted high-crime areas and the people in them, often developing suspicion from the mere fact that a person was in such an area. Officers focused on persons who, for example, made “furtive movements,” such as a hand going for something in a waistband or someone who seemed nervous. Others targeted people who appeared to be coming and going from certain buildings associated with illegal activity. The result of this approach was an unprecedented number of stops: 175,000 during a 15-month period in 1998 and 1999. But the demographic breakdown of those stops was troubling to many: Black persons (26% of the city’s population) accounted for 51% of the total, Hispanic persons (24% of the population) accounted for 33%, and white persons (43% of the population) accounted for only 13% of the stops. Civil libertarians claimed the NYPD was engaged in illegal racial profiling. The NYPD responded by touting significantly lower rates for index crimes during the stop-and-frisk era.³¹

Ultimately, the U.S. District Court for the Southern District of New York ruled in August 2013 that NYPD’s stop-and-frisk practices were unconstitutional, violating the civil rights of persons of color. The law enforcement community responded that the decision would dramatically change policing—and likely crime rates. In a move that seemed to signal the beginning of the end of stop and frisk, the NYPD in March 2015 issued new stop-and-frisk guidelines, requiring officers to be able to articulate facts establishing an objective justification for making the stop. Officers can no longer stop and frisk simply because suspects are making furtive movements in a high-crime area or because they fit a generalized description of a suspect, such as an African American male in a certain age group.³²

Finally, recent studies have shown that using stop and frisk alone reduces crime to little or no extent; rather, deployment of extra police to high-crime neighborhoods contributed far more to crime reduction.³³

Another important Supreme Court decision in February 1997 took officer safety into account. In *Maryland v. Wilson*, the Court held that police may order passengers out of vehicles they stop, regardless of any suspicion of wrongdoing or threat to the officer's safety.³⁴ Citing statistics showing officer assaults and murders during traffic stops, the Court noted the "weighty interest" in officer safety is present whether a vehicle occupant is a driver or a passenger.

In January 2013, the Supreme Court heard arguments in a landmark Fourth Amendment case involving nearly 50 years of uncertainty over whether or not police securing blood tests (for people who might be driving under the influence) without a suspect's consent is constitutional. In this case, a driver was pulled over for speeding and refused an on-scene breath test; the trooper took him to a hospital where he again refused a test. The trooper told the lab technician to take a blood sample anyway, without a warrant. The Supreme Court held the police must generally obtain a warrant in order to subject a drunk-driving suspect to a blood test unless specific exigent circumstances exist. However, each case is to be decided based on the facts.³⁵ For example, in 2019 the Court upheld the warrantless blood test of a drunk driver who had become unconscious enroute to the hospital, saying "unconsciousness does not just create pressing needs; it is itself a medical emergency. It means the suspect will have to be rushed to the hospital or similar facility not just for the blood test itself but for urgent medical care."³⁶ But the Court has also found the natural metabolism of alcohol in the bloodstream did not constitute an exigency that would justify a warrantless blood test. Further in 2016, the Supreme Court held in *Birchfield v. North Dakota* that, while the Fourth Amendment permits states to require warrantless breath tests prior to an arrest for drunk driving, it does not permit states to criminalize the refusal of warrantless blood tests by suspected drunk drivers.³⁷

Searches of Automobiles

The third general circumstance allowing a warrantless search is when an officer has probable cause to believe an automobile contains criminal evidence. The U.S. Supreme Court gives the police greater latitude in searching automobiles because a vehicle can be used to effect a getaway and to hide evidence. In *Carroll v. United States* (1925), officers searched the vehicle of a known bootlegger without a warrant but with probable cause, finding 68 bottles of illegal booze. On appeal, the Court ruled the seizure was justified. *Carroll* established two rules, however: First, to invoke the *Carroll* doctrine, the police must have enough probable cause that, if there had been enough time, a search warrant would have been issued; second, urgent circumstances must exist that require immediate action.³⁸

The Court also allows the police to enter an impounded vehicle following a lawful arrest in order to inventory its contents³⁹ and has stated that a person's general consent to a search of the interior of an automobile also justifies a search of any closed container found inside the car that might reasonably hold the object of the search.⁴⁰ And when an officer has probable cause to search a vehicle, the officer may search objects belonging to a passenger in the vehicle, provided the item the officer is looking for could reasonably be in the passenger's belongings⁴¹ (such as finding drugs in a passenger's purse). Finally, motorists have no expectation of privacy during a traffic stop if contraband is hidden in a vehicle and detected by a drug-sniffing dog,⁴² although police cannot extend the length of a routine traffic stop to allow a drug-sniffing dog to arrive on scene if the original purpose of the stop has been addressed (e.g., a ticket has been issued), unless the officer can demonstrate reasonable suspicion of additional criminal drug activity.⁴³

In 2012, the Supreme Court ruled in *U.S. v. Jones* that police violated the Constitution when they attached a global positioning system (GPS) device to a suspect's vehicle without a search warrant.⁴⁴ Police had followed a drug trafficking suspect for a month and eventually found nearly 100 kilograms of cocaine and \$1 million in cash when raiding the suspect's home in Maryland. Justice Antonin Scalia noted that the Fourth Amendment's protection of "persons, houses, papers, and effects, against unreasonable searches and seizures" extends to automobiles as well and that even a small trespass, if committed in "an attempt to find something or to obtain information," constitutes a "search" under the Fourth Amendment. More recently, the Supreme Court in *Byrd v. United States* (2018) ruled that police violated Terrence Byrd's Fourth Amendment rights when they searched his car and found heroin and body armor in the trunk.⁴⁵ The police conducted a warrantless search, noting that Byrd was driving a rental car (with the renter's permission) but was not listed on the rental agreement. The Supreme Court ruled

unanimously that Byrd, even though not listed on the rental agreement, had a reasonable expectation of privacy against a warrantless government vehicle search.



The courts have held that motorists have no expectation of privacy during a traffic stop if contraband hidden in a vehicle is detected by a drug-sniffing dog.

©iStockphoto.com/Fertnig

Going Global 8.1

Police Search and Seizure Around the World

In the United States, the Fourth Amendment protects people against unreasonable government searches and seizures. It is our Constitution that affords us these protections. People in other countries are also protected from unreasonable and overly intrusive actions by the government and other private parties. An individual's right to privacy is articulated in more than 180 national constitutions.⁴⁶ Consider the following examples:

Article 14 of Italy's Constitution

Home inspections, searches, or seizures shall not be admissible save in the cases and manners complying with measures to safeguard personal liberty. Controls and inspections for reason of public health and safety, or for economic and fiscal purposes, shall be regulated by appropriate laws.

Article 99 of Honduras's Constitution

No entrance or search may be made without the consent of the occupant or without order from a competent authority. Nevertheless, it [the home] may be searched, in case of urgency, to prevent the commission of or impunity from crimes, or to avoid grave injury to persons or damage to property. Except in cases of urgency, search of the home may not take place between six o'clock in the evening and six o'clock in the morning, without incurring responsibility. The law shall determine the requirements and formalities regarding the manner in which the entrance, inspection or search may be carried out, as well as the responsibilities that may be incurred by the authority carrying it out.

Section 72 of Denmark's Constitution

House searching, seizure, and examination of letters and other papers as well as any breach of the secrecy to be observed in postal, telegraph, and telephone matters shall take place only under a judicial order unless particular exception is warranted by Statute.

Chapter 2, Section 14 of South Africa's Constitution:

Everyone has the right to privacy, which includes the right not to have—

- a. their person or home searched;
- b. their property searched;
- c. their possessions seized; or
- d. the privacy of their communications infringed.

Source: Constitute, <https://www.constituteproject.org>.

Plain-View and Open-Field Searches

Essentially, police do not have to search for items that are seen in plain view. If police are lawfully on the premises and the plain-view discovery is inadvertent, then they may seize the contraband. For example, if an officer has been admitted into a home with an arrest or search warrant and sees drugs and paraphernalia on a living room table, the officer may arrest the occupants on drug charges as well as the ones related to the warrant. Or if an officer during a lawful traffic stop observes drugs in the backseat of the car, the officer may arrest for that as well. When an officer found a gun under a car seat while looking for the vehicle identification number, the Court upheld the search and the resulting arrest as being a plain-view discovery.⁴⁷ Furthermore, fences and the posting of “No Trespassing” signs afford no expectation of privacy and do not prevent officers from viewing open fields without a search warrant.⁴⁸ Nor are police prevented from making a naked-eye aerial observation of a suspect's backyard or other curtilage (the grounds around a house or building).⁴⁹

However, in *Collins v. Virginia* (2018), the Supreme Court ruled that police may not make a warrantless entry of curtilage in order to conduct a search, even if it involves a vehicle search.⁵⁰ Officer David Rhodes, while investigating two traffic incidents, observed a motorcycle under a tarp on a residential property. Suspecting this was the motorcycle involved in the traffic incidents, Rhodes entered

the property without a warrant, lifted the tarp, and confirmed the vehicle identification number (VIN) matched the VIN of a stolen motorcycle. When Ryan Austin Collins returned to the property, he was arrested, and the key to the motorcycle was found in his possession. While lower courts ruled the warrantless search was justified under the Fourth Amendment's automobile exception, the Supreme Court ruled this exception does not permit the warrantless entry of a home *or its curtilage* in order to search a vehicle.

The Supreme Court has ruled that residential porches are also considered part of the home itself and cannot be searched without a warrant. Officers from the Miami-Dade Police Department received a tip that marijuana was being grown in a house. The officers approached the front door (porch) with a drug dog. The Labrador retriever alerted officers to the presence of marijuana in the house; subsequently, officers obtained a search warrant and discovered the plants inside. The Supreme Court ruled, in *Florida v. Jardines* (2013), that the police can use residential porches to communicate with occupants, but a search that involves more intrusive measures (in this case, the use of a drug dog) constitutes an illegal



Looking at the plain-view doctrine, assume police officers are lawfully inside a home to execute an arrest warrant on a suspected bank robber. If, by chance, they happen to observe this illegal marijuana operation, the officers could then also arrest the occupant on drug charges.

ROBYN BECK/AFP/Getty Images

search.⁵¹ Thus, searches conducted from porches (and that go beyond the basic senses of a police officer) are not subject to the plain-view or open-field search exception.

Consent to Search

Another permissible warrantless search involves situations in which citizens consent to a search of their persons or effects—provided the defendant’s consent is given voluntarily. However, police cannot deceive people into believing they have a search warrant when they in fact do not.⁵² Nor can a hotel clerk give a valid consent to a warrantless search of the room of one of the occupants; hotel guests have a reasonable expectation of privacy, and that right cannot be waived by hotel management.⁵³ Further, absent consent from hotel operators, police must have a warrant or administrative subpoena to inspect hotel guest records.⁵⁴

What if one occupant of a home consents to a search while the other occupant refuses? In a recent case, a wife gave police permission to search for her husband’s drugs, but the husband refused to give such permission; the officers went ahead and searched and found cocaine. The Supreme Court reversed the husband’s conviction, saying the Constitution does not ignore the privacy rights of an individual who is present and asserting his rights.⁵⁵ However, in a feature of the law that should be important to college students with roommates, an occupant may still give police permission to search when the other resident is absent or does not protest. In fact, in 2014 the Supreme Court expanded police powers to seek consent from a co-occupant, ruling that even after an occupant has refused consent to search and the police then legally arrest that occupant for some other reason, the police may return and seek consent from a co-occupant who then has the right to voluntarily consent to a search of the entire premises.⁵⁶

Electronic Surveillance

Katz v. United States (1967) held that any form of electronic surveillance, including wiretapping, is a search and violates a reasonable expectation of privacy.⁵⁷ The case involved a public telephone booth, deemed by the Court to be a constitutionally protected area where the user has a reasonable expectation of privacy. This decision expressed the view that the Constitution protects people, not places. Thus, the Court has required that warrants for electronic surveillance be based on probable cause, describe the conversations that are to be overheard, be for a limited period of time, name subjects to be overheard, and be terminated when the desired information is obtained.⁵⁸ However, the Court has also held that electronic eavesdropping (i.e., when an informant wears a “bug,” or hidden microphone) does not violate the Fourth Amendment.⁵⁹

THE FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Today, the **Fifth Amendment** applies not only to criminal defendants but also to any witness in a civil or criminal case and anyone testifying before an administrative body, a grand jury, or a congressional committee. However, the privilege does not extend to blood samples, handwriting exemplars, and other such items not considered as testimony.⁶⁰

The right against self-incrimination is one of the most significant provisions in the Bill of Rights. Basically, it states that no criminal defendant shall be compelled to take the witness stand and/or give evidence against themselves nor be compelled to answer any question if the answer might later be used to implicate or convict them. This right is expressed in the so-called *Miranda* warning (also known as “Mirandizing” someone), which requires police, at the point of having someone in custody and



The *Miranda* warning must be given after a suspect is in custody and before interrogation begins; otherwise, any statements might be thrown out in court.

Gerald L. Nino, CBP, U.S. Dept. of Homeland Security

before questioning them about a crime or criminal activity, to inform the suspect “you have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.”

The *Miranda* warning stems from a case involving a 23-year-old man, Ernesto Miranda, who raped 18-year-old Barbara Ann Johnson. Johnson was walking to a Phoenix, Arizona, bus stop on the night of March 2, 1963, when Miranda shoved her into his car, tied her hands and ankles, and drove her to the edge of the city, where he raped her. He then drove Johnson to a street near her home, letting her out of the car and asking that she pray for him. The police subsequently picked up Miranda and included him in a police station lineup. Miranda was identified by several women; one identified him as the man who had robbed her at knifepoint a few months earlier, and Johnson thought he was the rapist.

Miranda was a 23-year-old eighth-grade dropout with a police record dating back to age 14, and he had also served time in prison for driving a stolen car across a state line. During questioning, the police told Miranda he had been identified by the women; Miranda then made a statement in writing describing the rape incident. He also noted he was making the confession voluntarily and with full knowledge of his legal rights. He was soon charged with rape, kidnapping, and robbery.

At trial, officers admitted that during the interrogation the defendant was not informed of his right to have counsel present and that no counsel was present. Nonetheless, Miranda’s confession was admitted into evidence. He was convicted and sentenced to serve 20 to 30 years for kidnapping and rape.

On appeal, the U.S. Supreme Court overturned Miranda’s conviction, stating the current practice of incommunicado interrogation is at odds with one of our nation’s most cherished principles—that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of free choice.⁶¹

There are two legal triggers for the *Miranda* warning: custody and interrogation. Once a suspect has been placed under arrest, the police must give the suspect the *Miranda* warning before an interrogation (discussed in Chapter 6) is conducted for a suspected offense, whether a felony or a misdemeanor. If an officer does not give the warning when required, a defense attorney may ask the court to exclude the suspect’s confession or statements. Once a Mirandized suspect invokes their right to silence, however, interrogation must cease. The police also may not readminister *Miranda* and interrogate the suspect later unless the suspect’s attorney is present. If, however, the suspect initiates further conversation, any confession they provide is admissible.⁶² Moreover, after an accused has invoked the right to counsel, the police may not interrogate the same suspect about a different crime.⁶³

An exception to the *Miranda* requirement is the brief, routine traffic stop, but a custodial interrogation of a DUI (driving under the influence) suspect requires the *Miranda* warning.⁶⁴ And the police may question a suspect who poses a public safety threat—known as the “public safety exception.” For example, when a clearly armed suspect runs into a public place and hides the gun, officers can legally ask the suspect about the location of the gun without violating *Miranda*.⁶⁵ In a more extreme example under the same exception, police were able to question Boston Marathon bomber Dzhokhar Tsarnaev for 16 hours without a *Miranda* warning because of the potential threat of co-conspirators and more planned bombings.⁶⁶

Decisions Eroding *Miranda*

It has been held that a second interrogation session held after the suspect had initially refused to make a statement did not violate *Miranda*.⁶⁷ The Court also decided that when a suspect waived their *Miranda* rights, believing the interrogation would focus on minor crimes, but the police shifted their questioning to a more serious crime, the confession was valid; there was no police deception or misrepresentation.⁶⁸ And when a suspect invoked their right to assistance of counsel and refused to make written statements then voluntarily gave oral statements to police, the statements were admissible.⁶⁹ Finally, a suspect need not be given the *Miranda* warning in the exact form as it was outlined in *Miranda v. Arizona*. In one case, the waiver form said the suspect would have an attorney appointed “if and when you go to court.” The Court held that as long as the warnings on the form reasonably convey the suspect’s rights, they need not be given verbatim.⁷⁰ Further, a suspect must clearly invoke the *Miranda* right. The Supreme Court has ruled that even when a suspect remained silent during 3 continuous hours of police questioning, the suspect had not invoked his rights under *Miranda*—suspects must specifically say they are choosing to remain silent.⁷¹

YOU BE THE . . . JUDGE

In 2013, the U.S. Supreme Court reviewed a case that focused on issues related to the Fifth Amendment, *Miranda* rights, and refusal to answer law enforcement questioning. *Salinas v. Texas* involved the questioning of Genovevo Salinas, who investigators suspected might have information pertaining to a double homicide. The investigators interviewed Salinas at his parents’ home, and Salinas’s father voluntarily gave the police his son’s shotgun. Salinas voluntarily answered questions later at the police station for about an hour until an officer asked him if ballistics analysis would show that his shotgun was used in the killings; at that point, Salinas remained silent and began behaving in a suspicious manner (e.g., staring at the floor, biting his lip, clenching his hands, shuffling his feet).

Salinas was later arrested and found guilty of murder. During his trial, the prosecutor told the jury that Salinas refused to answer the ballistics question and argued this was proof of his guilt. His lawyers appealed and argued he was punished for exercising his Fifth Amendment right against self-incrimination.

1. Does *Miranda* apply during voluntary police interviews (outside of a custodial interrogation)?
2. Can prosecutors use a suspect’s silence during police interviews to infer guilt during a criminal trial, or do Fifth Amendment protections apply?

The Supreme Court’s decision for this case is provided in the Notes section at the end of the book.⁷²

Lineups and Other Pretrial Identification Procedures

A police **lineup** or other face-to-face confrontation after the accused has been arrested is considered a critical stage of criminal proceedings; therefore, the accused has a right to have an attorney present. If counsel is not present, the evidence obtained is inadmissible.⁷³ However, the suspect is not entitled to the presence and advice of a lawyer before being formally charged, or when the police are using the more typical modern technique of a photo lineup, by showing a witness individual photos or a group of several photos typically referred to as a “six-pack.”⁷⁴



Photo lineups, known as a “six-pack,” are considered more likely to lead to misidentifications than live lineups.

©Mikael Karlsson/Alamy

Faulty eyewitness identifications are the leading cause of wrongful convictions, and as a result, the law regarding their use has changed significantly in recent years (see Chapter 11 for more on wrongful convictions). Lineups—whether in person or through photos—must be fair and cannot be unreasonably suggestive—for example, by the suspect’s being much taller than the others in the lineup or being the only person wearing a leather jacket similar to that worn by the perpetrator.⁷⁵ If identification procedures violate a suspect’s due process rights to fairness, police risk having identifications made during these procedures excluded from evidence at trial. Further, in light of extensive social science research on faulty eyewitness identifications, many law enforcement agencies have changed their identification practices to include safeguards such as informing the witness the suspect may or may not be in the lineup or photo set, preventing detectives working the case from being present to avoid giving inadvertent supportive or other cues to witnesses, and having witnesses record their level of certainty at the time of identification.⁷⁶ Some courts have instituted much stricter legal standards for admitting eyewitness evidence.⁷⁷

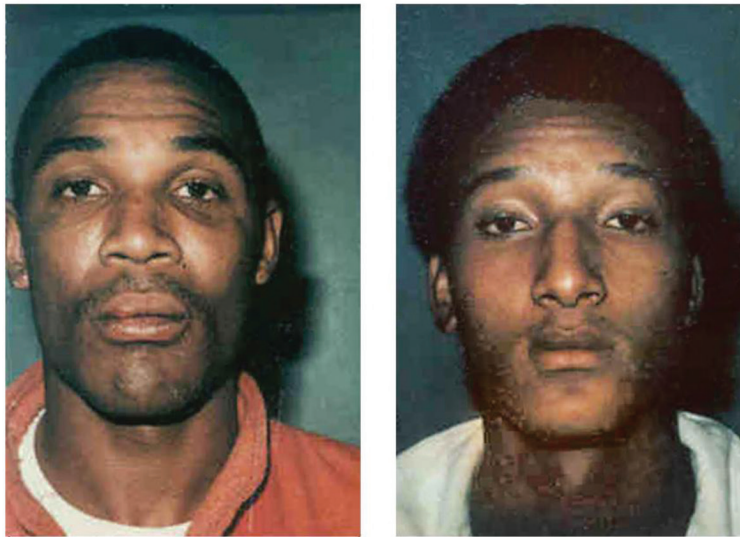
THE SIXTH AMENDMENT

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and

cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Many people believe the **Sixth Amendment** right of the accused to have the assistance of counsel before and during trial is the greatest right we enjoy in a democracy.

Powell v. Alabama (1932) established that in a capital case, when the accused is poor and illiterate, they enjoy the right to assistance of counsel for their defense and due process.⁷⁸ In *Gideon v. Wainwright* (1963), the Supreme Court mandated that all indigent people charged with felonies in state courts be provided counsel.⁷⁹ *Gideon* applied only to felony defendants, but *Argersinger v. Hamlin* (1973) extended the right to counsel to indigent people charged with *misdemeanor* crimes if they face the possibility of incarceration (however short the incarceration may be).⁸⁰



Poole

Cotton

Explore the case of Ronald Cotton (right), who served 11 years in prison for a sexual assault he did not commit. Despite studying her attacker closely, the victim misidentified Cotton in live and photo lineups, mistaking him for the real perpetrator, Bobby Poole (left).

For defendants with resources, who represents them in court is a matter of their own choice. In 2012, a home health care agency owner, Sila Luis, was indicted on Medicare fraud charges. Prosecutors alleged that Luis paid illegal kickbacks to patients and billed the federal government for services not rendered by her companies. Following existing federal law, the courts decided to freeze all her assets, including the \$45 million she was accused of fraudulently procuring, as well as another \$2 million contained within her accounts. In 2016, the U.S. Supreme Court ruled in *Luis v. United States* that the defendant's Sixth Amendment right to retain her counsel of choice was violated since she was unable to hire an attorney using her own assets.⁸¹ As a result, pretrial restraint of assets unrelated to the crime(s) in which a defendant is charged is now deemed unconstitutional.

Another landmark decision concerning the right to counsel is *Escobedo v. Illinois* (1964).⁸² Danny Escobedo's brother-in-law was fatally shot in 1960; Escobedo was arrested and questioned at police headquarters; and his request to confer with his lawyer was denied, even after the lawyer arrived and asked to see his client. The questioning of Escobedo lasted several hours, during which time he was handcuffed and forced to remain standing. Eventually, he admitted being an accomplice to murder. At no point was Escobedo advised of his rights to remain silent or to confer with his attorney. Escobedo's conviction was ultimately reversed by the U.S. Supreme Court, based on a violation of his right to counsel. However, the real thrust of the decision was his Fifth Amendment right not to incriminate himself and to be informed of his rights; when a defendant is scared, flustered, ignorant, alone, and bewildered, they are often unable to effectively make use of protections granted under the

Fifth Amendment without the advice of an attorney. Note that *Miranda*, decided 2 years later, simply established the guidelines for the police to inform suspects of these rights.

The Sixth Amendment's provision for a speedy and public trial is discussed in Chapter 9.

IN A NUTSHELL

- The Fourth Amendment protects the right of the people to be secure in their persons, papers, and effects; against unreasonable searches and seizures; and no search or arrest warrants shall be issued without probable cause, describing the place to be searched and disclosing the persons or things to be seized.
- The standard for a legal arrest, search, and seizure is probable cause, meaning that for an officer to make an arrest or conduct a search of someone's person or effects, the officer must have a reasonable suspicion that a crime has been or is about to be committed by that individual (which, in the case of a search, can include the person's merely possessing some form of illegal contraband).
- The exclusionary rule forbids evidence obtained in violation of the Fourth Amendment from being used against the defendant in a criminal trial.
- There are two ways for the police to make an arrest: with a warrant and without a warrant. It is always best for a police officer to arrest someone with a warrant because a warrant means a neutral magistrate has examined the facts and determined the individual should be arrested in order to make an accounting of the charge(s).
- Police officers must obtain a warrant when making a felony arrest, unless exigent circumstances are present (immediate action being required) and the officer possesses probable cause to make the arrest.
- As with arrests, the best means by which the police can search a person or premises is with a search warrant issued by a neutral magistrate. The process for obtaining a search warrant is the same as for an arrest warrant; in this case, a determination is made after the magistrate hears evidence from an affiant about whether probable cause exists to believe a person possesses evidence of a crime, such as stolen property or a weapon believed to have been used in committing the crime.
- The police may detain a person briefly for questioning, even without probable cause, if they believe the person has committed a crime or is about to commit a crime, and the person may be frisked for a weapon if an officer reasonably suspects the person is carrying one and fears for their life. An extension of that rule involves the "plain feel" doctrine, according to which police, having reasonable cause to believe a person possesses drugs and feeling what resembles such an object on their person, may remove the object and make an arrest.
- The police have greater latitude in searching automobiles because they can be used to conduct a getaway and to hide evidence.
- The police may search incident to lawful arrest and do not need a search warrant for items that are seen in plain view or when citizens give police consent. The police must, however, obtain a search warrant to search a suspect's cell phone or conduct a blood test.
- Police may use drug-sniffing dogs at traffic stops but not near homes without a warrant; they may also collect DNA swabs from arrestees as part of a routine booking procedure.
- The right against self-incrimination, under the Fifth Amendment, states that no criminal defendant shall be compelled to take the witness stand and give evidence against himself. Once a suspect is arrested, the *Miranda* warning must be given before they are interrogated for any offense, be it a felony or a misdemeanor.
- The Sixth Amendment guarantees the accused the right to have the assistance of counsel during custodial interrogation and during trial.

KEY TERMS

Affidavit (p. 174)	Probable cause (p. 172)
Arrest warrant (p. 172)	Reasonable suspicion (p. 181)
Exclusionary rule (p. 173)	Search and seizure (p. 172)
Exigent circumstance (p. 174)	Sixth Amendment (p. 189)
Fifth Amendment (p. 185)	<i>Terry</i> stop (p. 181)
Fourth Amendment (p. 172)	Search warrant (p. 172)
Lineup (p. 187)	

REVIEW QUESTIONS

1. What protections are afforded citizens by the Fourth, Fifth, and Sixth Amendments?
2. What is an example of probable cause?
3. What, from both police and community perspectives, are the ramifications of having or not having the exclusionary rule?
4. How would you distinguish between arrests and searches and seizures with and without a warrant? Which method for arresting or searching is always best and why?
5. In what significant ways has the *Miranda* decision been eroded, and what future challenges might arise given the continuing tension between law enforcement powers and individual civil rights?
6. What limitations are placed on the police in their ability to use high-tech electronic equipment in order to listen in on conversations? Search for drugs?
7. What are two major court decisions concerning right to counsel, and how do they apply in everyday life?

LEARN BY DOING

1. A long-standing debate concerns whether the U.S. Constitution should be governed by a conservative judicial philosophy that is termed “strict constructionism”—or relying on the Framers’ original intent and limiting interpretation of legal and constitutional language to the literal meaning at the time of its passage—or a philosophy that is often termed “judicial activism,” which is sometimes referred to as “legislating from the bench,” with critics believing that judges rule based on personal or political considerations rather than on existing law. Explain which of the two polar positions you favor, or some hybrid position, and why.
2. Your criminal justice professor has assigned a class project wherein class members are to determine which amendment in the Bill of Rights—the Fourth, Fifth, or Sixth—contains the most important rights that are protected under a democracy. You are to analyze the three amendments and present your findings as to which one is the most important.
3. From the time of his confirmation in 1969, Chief Justice Warren Burger viewed the exclusionary rule as an unnecessary and unreasonable intrusion on law enforcement. Assume that, as part of a group project, you are to prepare a pro–con paper examining why there should or should not be an exclusionary rule as a part of our system of justice. What will be your arguments, pro and con?

THE COURTS

PART



Chapter 9	Court Organization: Structure, Functions, and the Trial Process	195
Chapter 10	The Bench and the Bar: Those Who Judge, Prosecute, and Defend	225
Chapter 11	Court Methods and Challenges: Sentencing and Punishment	249

This part consists of three chapters. **Chapter 9** examines court structure and functions at the federal, state, and trial court levels; included are discussions of pretrial preparations, the actual trial process, the jury system, and some court technologies.

Chapter 10 looks at the courtroom work group, including the judges, prosecutors, and defense attorneys, as well as legal defenses that are allowed under the law.

Chapter 11 discusses sentencing, punishment, and appeals. Included are the types and purposes of punishment, types of sentences persons convicted may receive, federal sentencing guidelines, victim impact statements, and capital punishment.



iStockphoto.com/dhughes9



COURT ORGANIZATION

Structure, Functions, and the Trial Process

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 9.1** Explain the methods and purposes of the adversarial court system.
- 9.2** Explain court jurisdiction and how it is determined.
- 9.3** Identify the purpose and process of state appeals courts.
- 9.4** List the functions of the various tiers of the federal court system, including appeals courts.
- 9.5** Relate the activities that occur during the pretrial process as attorneys prepare for trial.
- 9.6** Delineate the trial process, from opening statements through conviction and appeal.
- 9.7** Discuss the impact of new technologies on the courts.

ASSESS YOUR AWARENESS

Test your knowledge of court structure and functions as well as the trial process and jury system by responding to the following six true–false items; check your answers after reading this chapter.

- 1.** America’s court system relies on the adversarial system, which includes, among other things, the cross-examination of witnesses.
- 2.** America’s court system consists of a national system of federal courts as well as 50 state court systems, plus those in the District of Columbia and U.S. territories.
- 3.** Federal judges are nominated by the president and confirmed by the Senate, and they have a lifetime appointment.
- 4.** All courts generally have unlimited jurisdiction to hear civil and criminal trials as well as appeals.
- 5.** The Sixth Amendment gives the accused the right to a trial by an impartial jury of peers—meaning 12 people who are “similar in nearly all regards” to the defendant.
- 6.** A person convicted of a crime may quickly and easily—and at any time—leave the state court appellate system and appeal in a federal court.

Answers can be found on page 401.

Tylee Ryan, aged 16, and Joshua “JJ” Vallow, aged 7, were last seen in September 2019. Their mother, Lori Vallow, and her husband, Chad Daybell, were charged with their murders after the remains of both children were found on Daybell’s property in June 2020. Joshua’s grandmother reported to police that her grandson, who had special needs, had not been attending school. Vallow and Daybell never reported the children missing and refused to cooperate with authorities, who subsequently tried to locate the children.

The story of the missing children made national news after the couple fled to Idaho. An extensive manhunt located both parties in Hawaii in January 2020. Authorities charged Vallow with two counts of desertion and nonsupport of dependent children after she failed to physically produce her children within a month. She was later charged with two counts of first-degree murder, one count of conspiracy to commit murder, and two counts of conspiracy. Daybell was charged with the same, including an additional count of first-degree murder, as his wife died under suspicious circumstances and her exhumed body suggested evidence of homicide (Daybell married Vallow weeks after his wife was found dead in her home).

Vallow pleaded not guilty to the murder charges. Prosecutors had 60 days to decide whether they would seek the death penalty. Court documents show that prosecutors intend to seek the

death penalty if she is convicted of any of the counts of first-degree murder or conspiracy to commit first-degree murder. Should Vallow be found guilty and is sentenced to death, her case will be automatically appealed. To avoid making an “irreversible mistake,” most states authorizing the death penalty mandate appellate review of death sentences by the state’s Supreme Court. This review examines the underlying conviction and occurs regardless of defendants’ wishes.

Do you agree that all death penalty sentences should be subject to appellate review? On one hand, appellate reviews are time-consuming and costly. On the other, we cannot reverse the outcome of the sentencing decision once a person has been put to death. Should an appellate review occur even if the person sentenced to death asks the courts to forgo the review?

As you read this chapter, consider these questions and the role of our nation’s courts, which deal not only with high-profile cases such as Vallow’s but also with the much more minor and numerous cases that overload our state trial courts.

INTRODUCTION

Courts have existed in some form for thousands of years. The court system has survived the dark eras of the Inquisition and the Star Chamber (which enforced unpopular political policies in England during the 1500s and 1600s and, without a jury or public view, meted out severe punishment, including whipping, branding, and mutilation). The U.S. court system developed rapidly after the American Revolution and led to the establishment of law and justice on the western frontier.

In this chapter, we first consider the adversarial system the courts employ and how the courts influence our lives as policy-making bodies. Then the focus shifts to the several levels of courts found in the United States. Your attention is drawn to the case of Barry Kibbe, presented near the beginning of the section on federal courts; this case provides a rare look at the entire criminal trial and appeals process, all the way to the U.S. Supreme Court.

COLONIAL COURTS: AN OVERVIEW

Our nation’s colonial courts began modestly. Thomas Olive, deputy governor of West Jersey in 1684, described the prevailing court system when he wrote that he was “in the habit of dispensing justice sitting in his meadow.”¹ As the population of the colonies grew, however, formal courts of law appeared in Virginia, Massachusetts, Maryland, Rhode Island, and Connecticut, among other venues. The colonies drew on the example set by the English Parliament in that the colonial legislatures became the highest courts.²

Beneath the legislatures (those who make and change laws) were the superior courts, which heard both civil and criminal cases. Over time, some colonies established trial courts headed by a chief justice and several associate justices. Appeals from the trial courts were heard by the governor and his council in what were often called “courts of appeals.”³ Courts established at the county level played a key role in both the government and the social life of the colonies. In addition to having jurisdiction in both civil and criminal cases, county courts fulfilled many administrative duties, including setting and collecting taxes, supervising the building of roads, and licensing taverns.

Eventually, however, the founders of the new republic had profound concerns about the distribution of power between courts and legislatures and between the states and the federal government. Coming from the experience of living under English rule, they feared the tyranny that could flow from the concentration of governmental power. At the same time, they were living with the problems associated with a weak centralized government. This conflict prompted the delegates to the Constitutional Convention of 1787 to create a federal judiciary that was separate from the legislative branch of government. As a result, today we have the **dual-court system**—one implemented by the **state court system** (inherited directly from the Crown of England) and the other created by Congress and entrusted to the **federal court system**.⁴

Our Adversarial System

Ralph Waldo Emerson stated that “every violation of truth . . . is a stab at the health of human society.”⁵ Certainly, most people would agree that the traditional, primary purpose of our courts is to provide a forum for seeking and obtaining the truth. Indeed, the U.S. Supreme Court declared in 1966 in *Tehan v. U.S. ex rel. Shott* that “the basic purpose of a trial is the determination of truth.”⁶

Our American court system relies on the **adversarial system**, which uses several means to get at the truth. First, evidence is tested under this approach through cross-examination of witnesses. Second, power is lodged with several different people; each courtroom actor is granted limited powers to counteract those of the others. If, for example, the judge is biased or unfair, the jury can disregard the judge and reach a fair verdict. If the judge believes the jury has acted improperly, they can set aside the jury’s verdict and order a new trial. Furthermore, both the prosecuting and defense attorneys have certain rights and authority under each state’s constitution. This series of checks and balances is aimed at curbing misuse of the criminal courts.

Going Global 9.1

Adversarial Versus Inquisitorial Justice Systems

As noted, courts in the United States rely on the adversarial system of justice, particularly for our most serious cases. Each courtroom actor is granted powers to counteract the power of others. Under this model, defendants are judged by peers (a jury), and evidence is presented orally. Because the adversarial model allows lay decision-makers to determine guilt, careful attention is given to the development of rules of evidence that will be presented to jurors. Judges serve as the gatekeepers who determine what evidence is and is not admissible for jurors to consider.

Inquisitorial justice systems (such as those we use in the United States to judge minor crimes, such as misdemeanors) represent the primary justice system used by other countries, including Japan, Germany, China, and Scotland. Inquisitorial systems share some common characteristics with adversarial systems. For example, both systems differ only slightly in their standards of proof, have a presumption of innocence, provide the right to counsel, and provide (to varying degrees) the right to confrontation by the accused.

However, the primary function of the courts operating within an inquisitorial system is to take responsibility for finding the truth. Documentation is preferred over oral evidence presentation, and plea bargaining (which interferes with the ultimate discovery of “truth”) is generally not permitted in the strict sense. Rather than offering rules of evidence, the judge is relied upon to determine the reliability and significance of evidence.

Most criminal law systems are not considered to be purely adversarial or purely inquisitorial since most fall somewhere between these two ideological systems. However, experts have argued that the Netherlands employs the most inquisitorial justice system, while the justice system in England/Wales employs the most adversarial system in Western Europe. Consider the strengths and weaknesses of each system and which system you believe is best situated to achieve justice.

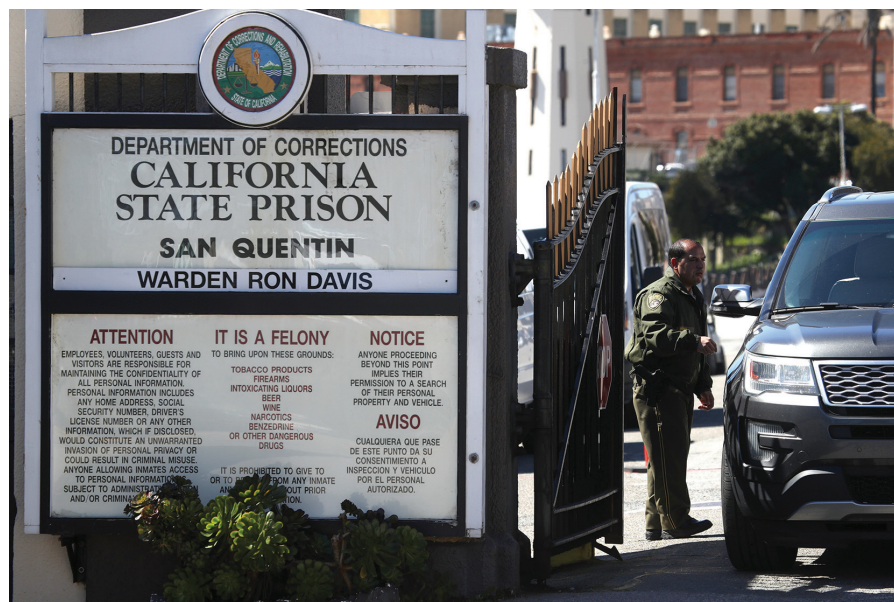
Source: Peter J. Van Koppen and Steven D. Penrod. (2003). “Adversarial or Inquisitorial: Comparing Systems,” in Peter J. Van Koppen and Steven D. Penrod (Eds.), *Adversarial Versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems*, pp. 2–20. Plenum.

The Influence of Courts in Policy-Making

Determining what the law says and providing a public forum involve the courts in policy-making. **Policy-making** can be defined as choosing among alternative choices of action. The policy decisions of the courts affect virtually all of us in our daily living. In recent decades, the courts have been asked to deal with issues that previously were within the purview of the legislative and executive branches. Because many of the Constitution’s limitations on government are couched in vague language, the judicial branch must help interpret the law and deal with potentially volatile social issues, such as those involving prisons, abortion, and schools.⁷

U.S. Supreme Court decisions have dramatically changed race relations, resulted in the overhaul of juvenile courts, increased the rights of the accused, prohibited prayer and segregation in public schools, legalized and then allowed states to regulate abortion, and allowed for destruction of the U.S. flag. State and federal courts have together overturned minimum residency requirements for welfare recipients, equalized school expenditures, and prevented road and highway construction from damaging the environment. They have eliminated the requirement of a high school diploma for a firefighter's job and ordered increased property taxes to desegregate public schools. More recently, the federal courts blocked travel bans that sought to keep foreign nationals from Middle Eastern nations from entering the United States and struck down the FFA mandate requiring that passengers wear masks on planes. Cases in which courts make policy determinations usually involve government, the Fourteenth Amendment, and the need for equity—the remedy most often used against governmental violations of law. Recent policy-making decisions by the judicial branch have been based not on the Constitution but, rather, on federal statutes concerning the rights of the disadvantaged and consumers and the environment.⁸

Perhaps nowhere have the nation's courts had more of an impact than in the prisons—from which tens of thousands petitions are filed by incarcerated persons each year in the U.S. district courts (approximately 75% of them filed by state prisoners).⁹ Judicial intervention has extended to incarcerated persons the recognition of the constitutional rights of free speech, religion, and due process; abolished the South's plantation model of prisons; accelerated the professionalization of U.S. correctional managers; encouraged a new generation of correctional administrators more amenable to reform; reinforced the adoption of national standards for prisons; and promoted increased accountability and efficiency of prisons. And while judicial intervention previously failed to prevent the explosion in prison populations and costs,¹⁰ recent judicial decisions have ordered reductions in the numbers of incarcerated persons housed in correctional facilities. In 2011, the U.S. Supreme Court ruled that court-mandated population limits are necessary to protect the incarcerated person's constitutional rights and prevent **Eighth Amendment** violations involving cruel and unusual punishments.¹¹



California significantly reduced prison populations by nearly 30,000 inmates over the course of 15 months following the U.S. Supreme Court ruling in *Brown v. Plata*.

Justin Sullivan/Getty Images News/Getty Images

It may appear that the courts are overbroad in their review of issues. However, judges “cannot impose their views . . . until someone brings a case to court, often as a last resort after complaints to unresponsive legislators and executives.”¹² Plaintiffs must be truly aggrieved and have a legal right to bring their case to court. The independence of the judicial branch, particularly at the federal court level, where judges enjoy lifetime appointments, allows the courts to champion the causes of the underclasses: those with fewer financial resources or votes (by virtue of, say, being a member of an underrepresented group) or without a positive public profile.¹³ Also, the judiciary is labeled the “least dangerous branch,” having

no enforcement powers. Moreover, the decisions of the courts can be overturned by legislative action. Thus, the judicial branch depends on a perception of legitimacy surrounding its decisions.¹⁴

PRACTITIONER'S PERSPECTIVE

ATTORNEY



Name: Jeff Mason

Position: Attorney

Location: Colorado

What is your career story? I became interested in the law at an early age. My dad was a cop growing up, so I grew up on cop stories and probably still get my fair share of them. That's what interested me in getting my bachelor's degree in criminal justice and criminology. I also went on to get a master's degree. And it was really during my undergraduate studies that I developed an interest in writing and, specifically, in persuasive writing. I really found that I enjoyed and began to excel at writing and trying to persuade an audience to adopt my viewpoints. So I'm not entirely sure how it happened, but I decided that based on those interests that I might do well in a legal career.

What are some challenges and misconceptions you face in this position? I think there are a number of challenges from the legal side. The law is a big thing; it's always changing and no two cases are the same. How the law applies to a particular case is always different from that of the previous case. It's also a sensitive area, dealing with the criminal system. It can be a very emotionally challenging field. It's an area ripe with challenges, and a lot of that has to do with the nature of the work itself.

I'm the first to appreciate a good crime drama or movie, but it certainly does create a challenge as far as the public perception of the judicial process. Everything isn't exactly how it's portrayed, and I often find myself watching these shows and saying, well, this is incorrect. There's a public perception that the judicial process is more action packed than it might really be at trial.

What role does diversity play in this position? Diversity is something I see all the time. There is a diverse body of lawyers these days. I even notice that in law school that there are men and women of every background. The same is true of the parties as well; the courts are unique in that they deal with cases of every type, civil and criminal. So you see corporations, individuals, men and women of a variety of ethnic backgrounds.

What are some challenges you face in this position? Technology has become the biggest challenge. The Constitution and laws are evolving as technology evolves and changes, so that is a battle that legislatures and judges have to deal with on a daily basis. These laws have been around for some time now, and we have to find ways to apply them, given the different and unique circumstances in which these crimes and offenses are committed. I know that, for example, technological advancements such as GPS, cell phones, even night vision goggles, interplay with constitutional rights against unreasonable searches and seizures. These are things that courts have to wrestle with and address on a daily basis as law enforcement tactics also advance.

AMERICAN COURTS: A DUAL-COURT SYSTEM

To better understand the U.S. court system, it is first important to know that this country has a dual-court system: both a national system of federal courts and 50 state court systems. Although often sharing similar names, they operate under different constitutions and laws, as outlined in the sections that follow.

Before exploring these different courts, we take up the critical issue of **jurisdiction**, which is best defined as a court’s legal authority to hear and decide a particular type of case. Jurisdiction is set forth in state and federal law, and it is typically based on geography (i.e., where the case is physically located) and subject matter (what the case is about: criminal, civil, juvenile, etc.). Courts hear only cases that fall under their jurisdiction and authority; our courts are organized along state and federal lines and then further along subject matter lines (see Table 9.1). At the lower end are the limited-jurisdiction state trial courts, handling traffic cases, misdemeanors, and juvenile matters, for example. At the highest level is the U.S. Supreme Court, which hears a limited number of appeals on federal and constitutional legal issues. The great majority of the nation’s judicial business occurs at the state—not the federal—level, and our discussion begins there.

TABLE 9.1 ■ State and Federal Courts	
State Courts	Federal Courts
<i>Appellate Jurisdiction—Courts of Last Resort</i>	
State supreme court	U.S. Supreme Court
<i>Appellate Jurisdiction—Intermediate Courts of Appeals</i>	
State courts of appeals	Circuit courts of appeals
<i>Trial Courts</i>	
State trial courts	U.S. district courts
<i>Limited Jurisdiction Trial Courts</i>	
Traffic, juvenile, justice of the peace (for example)	Tax, admiralty, bankruptcy (for example)

STATE COURTS

There are several levels of state courts: lower courts, which are trial courts of limited jurisdiction; major trial courts of general jurisdiction; and appeals courts.

Where Most Cases Begin: Lower Courts

At the lowest level of state courts are trial courts of limited jurisdiction, also known as inferior courts or lower courts. There are more than 13,500 trial courts of limited jurisdiction in the United States, staffed by about 18,000 judicial officers. The lower courts constitute 85% of all judicial bodies in the United States.¹⁵

Variously called district, justice, justice of the peace, city, magistrate, or municipal courts, the lower courts decide a restricted range of cases. These courts are created and maintained by city or county governments and therefore are not part of the state judiciary. The caseload of the lower courts is staggering—typically more than 83 million cases a year, an overwhelming number of which are traffic cases (more than 42 million). The COVID-19 pandemic affected these typically steady case numbers, with caseloads dropping about 28% between 2019 and 2020 due to shutdowns and backlogs in system processing.¹⁶

The workload of the lower courts can be divided into felony criminal cases, nonfelony criminal cases, and civil cases. In the felony arena, lower-court jurisdiction typically includes the preliminary stages of felony cases. Therefore, after an arrest, a judge in a trial court of limited jurisdiction will hold

the initial appearance, appoint counsel for those in need, and conduct the preliminary hearing. Later, the case will be transferred to a trial court of general jurisdiction for trial (or plea) and sentencing.¹⁷



Major court complexes, like this one in San Diego, California, are common in bigger cities where a variety of courts—state and federal—handle sometimes overwhelming caseloads.

© Jessica Miller/SAGE

General Jurisdiction: Major Trial Courts

State trial courts of general jurisdiction are usually referred to as the major trial courts. There are an estimated 2,000 major state trial courts, staffed by more than 11,000 judges.

Each court has its own support staff consisting of a clerk of the court, a bailiff, and others. In most states, the trial courts of general jurisdiction are also grouped into judicial districts or circuits. In rural areas, these districts or circuits encompass several adjoining counties, and the judges are true generalists who hear a variety of cases and literally ride the circuit; conversely, larger counties have only one circuit or district for the area, and the judges are often specialists assigned to hear only certain types of cases.¹⁸ The term “general jurisdiction” means these courts have the legal authority to decide all matters not specifically delegated by state law to the lower courts of limited jurisdiction. The most common names for these courts are district, circuit, and superior.¹⁹ On the criminal justice front, most serious criminal violations, including many drug-related offenses, are heard in these trial courts of general jurisdiction. Although the courts are overburdened with heavy case filings, most criminal cases do not go to trial, and the dominant issue in the courts of general jurisdiction is not guilt or innocence, but what penalty to apply to someone who has entered a guilty plea through plea bargaining (described later in this chapter). Figure 9.1 shows an organizational structure for a county district court serving a population of 300,000. Note the variety of functions and programs that exist, in addition to the basic court role of hearing trials and rendering dispositions.

Within the state trial court system, several specialty courts or problem-solving courts, such as drug, family, mental health, veterans’, and domestic violence courts, have become more common. They are used to divert criminal defendants into treatment programs rather than jail or prison (see Diversion Programs/Problem-Solving Courts later in this chapter).

Figure 9.2 shows the caseload trends for state criminal trial courts in the United States. As with crime in general, caseloads are declining in the trial courts.

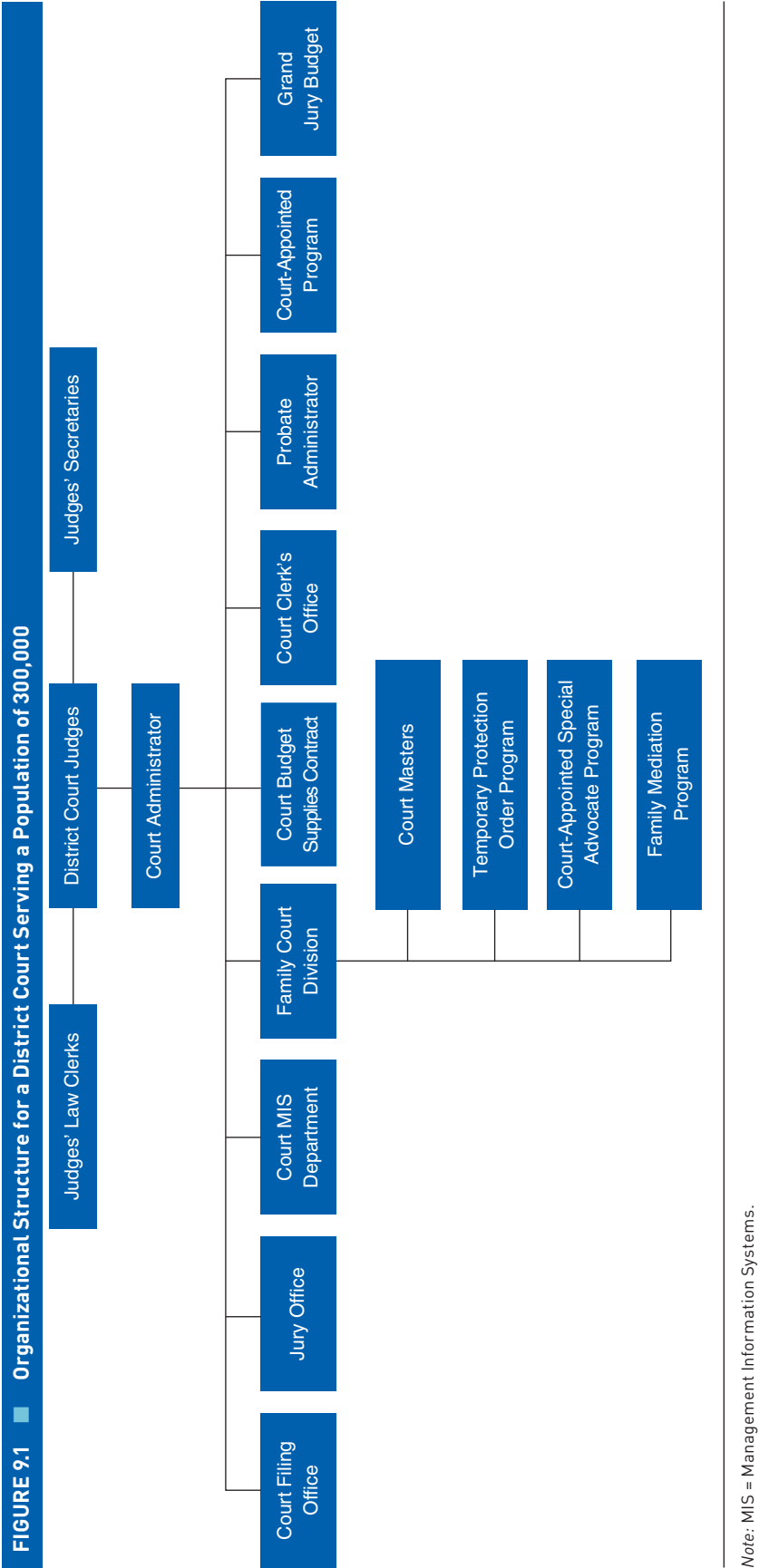
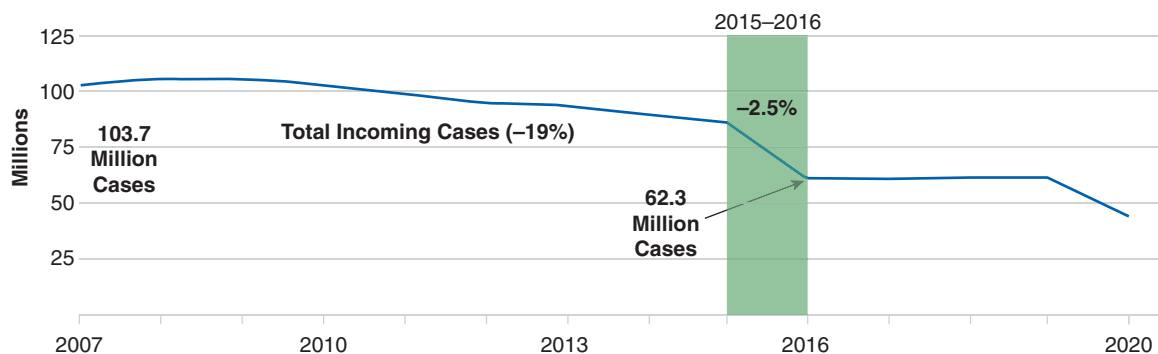


FIGURE 9.2 ■ State Court Incoming Caseloads, 2016–2020

Total incoming caseloads in state courts reached an apex of just over 106.1 million cases at the onset of the Great Recession in 2008. Between 2009 and 2016, aggregate caseloads declined nearly 21%. Case numbers held relatively steady between 2016 and 2019, before the onset of the COVID-19 pandemic in 2020.



Source: www.courtstatistics.org.

Appeals Courts

After a conviction in a criminal case or a judgment in a civil case, the first stop for an appeal in the state courts is known as an **intermediate court of appeals** (ICA). These courts stand between trial courts and courts of last resort (state supreme courts), and they typically have appellate jurisdiction only—that is, they hear only appeals.

State courts have experienced a significant growth in appellate cases that would overwhelm a single appellate court such as a state's supreme court. To alleviate the caseload burden on courts of last resort, state officials have responded by creating ICAs, which must hear all properly filed appeals. As of 2022, 42 states had established permanent ICAs. The only states not having an ICA are sparsely populated with low volumes of appeals: Delaware, Maine, Montana, New Hampshire, Rhode Island, South Dakota, Vermont, and Wyoming (also, the District of Columbia does not have ICAs). Nevada's population and caseloads grew in recent years, prompting voters in 2014 to approve the creation of an ICA, which began hearing its first cases in early 2015.²⁰ West Virginia established the most recent ICA, signing it into law in 2021 to review cases starting in 2022.²¹ The structure of the ICAs varies. In most states, these bodies hear both civil and criminal appeals, and these courts typically use rotating three-judge panels. Also, the state ICAs' workload is demanding: According to the National Center for State Courts, state ICAs report that more than 185,000 cases are filed annually.²² ICAs engage primarily in error corrections; they review trials to make sure that the law was followed and that the overall standard is one of fairness. The ICAs represent the final stage of the process for most litigants. Very few cases make it to the appellate court in the first place, and of those cases, only a small portion will be heard by the state's court of last resort.²³

The state's **court of last resort** is usually referred to as the state supreme court. The specific names differ from state to state, as do the number of judges (from a low of five to as many as nine). Unlike the ICAs, these courts do not use panels in making decisions; rather, the entire court sits to decide each case. All state supreme courts have a limited amount of original jurisdiction in dealing with matters such as disciplining lawyers and judges.²⁴ Nowhere is the policy-making role of state supreme courts more apparent than in deciding death penalty cases—which, in most states, are appealed automatically to the state's highest court, thus bypassing the ICAs. The state supreme courts are also the ultimate review board for matters involving interpretation of state law.²⁵ In states not having ICAs, the state supreme court has no power to choose which cases will be placed on its docket. However, the ability of most state supreme courts to choose which cases to hear makes them important policy-making bodies. Whereas ICAs review thousands of cases each year looking for

errors, state supreme courts handle a hundred or so cases that present the most challenging legal issues arising in that state.

FEDERAL COURTS

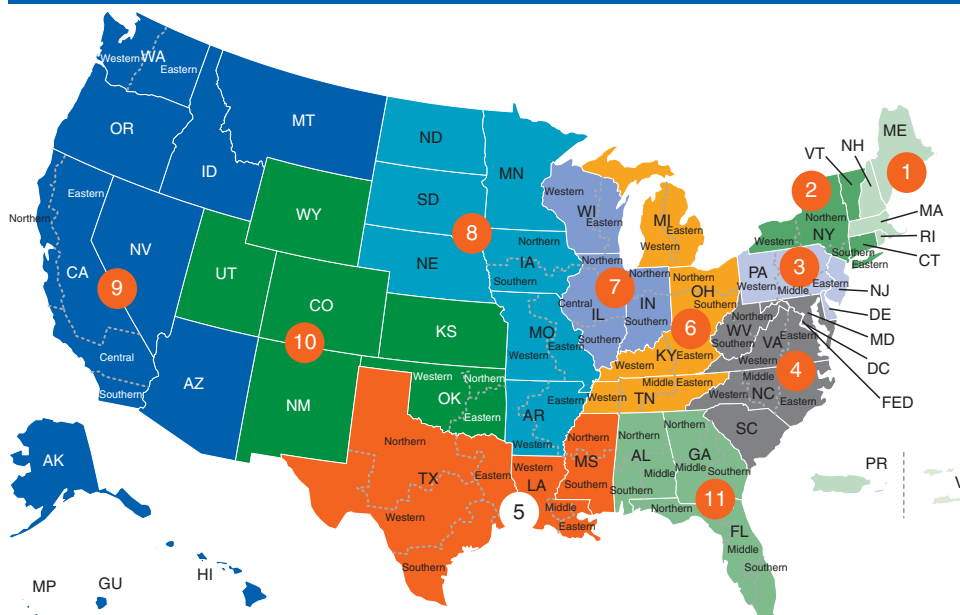
As in the state court system, there are multiple levels of courts in the federal court system. The accompanying “You Be the . . . Judge” exercise describes a case that uniquely demonstrates the entire appellate process through the dual state and federal court systems, going through the state courts and all the way to the U.S. Supreme Court.

Federal Trial Courts: U.S. District Courts

The U.S. **district courts**, like their counterparts in the state court system, may be fairly described as the “workhorses” of the federal judiciary because nearly all civil or criminal cases heard in the federal courts are initiated at the district court level. Indeed, there are about 377,000 annual combined filings for civil cases and criminal defendants in the U.S. district courts.²⁶

The locations of the U.S. district courts are outlined in Figure 9.3 (sometimes designated by region—“northern” or “eastern,” for example). Congress created 94 U.S. district courts, 89 of which are located within the 50 states. There is at least one district court in each state (some states have more, such as California, New York, and Texas, each of which has four). Congress has created 678 district court judgeships for the 94 districts. The president nominates district judges, who must then be confirmed by the Senate; they then serve for life unless removed for cause. In the federal system, the U.S. district courts are the federal trial courts of original jurisdiction for all major violations of federal criminal law (some 500 full-time magistrate judges hear minor violations).²⁷ They can also hear appeals from state supreme courts (involving constitutional questions) and lower federal courts.

FIGURE 9.3 ■ Geographic Boundaries of U.S. Courts of Appeals and District Courts



District court judges are assisted by an elaborate supporting cast of clerks, secretaries, law clerks, court reporters, probation officers, pretrial services officers, and U.S. marshals. The larger districts also have a public defender. Another important actor at the district court level is the U.S. attorney—the

federal prosecutor. There is one U.S. attorney in each district. The work of district judges is significantly assisted by 352 bankruptcy judges, who are appointed for 14-year terms by the court of appeals in which the district is located.

U.S. Courts of Appeals: Circuit Courts

Much like the state court system, the federal system provides intermediate courts of appeals—intermediate between U.S. district courts and the U.S. Supreme Court. These courts are known as the **circuit courts** of appeals, referring to the 13 geographic areas—or circuits—where these courts are seated and over which they exercise jurisdiction. Eleven of the circuits are identified by number, and two others are called the D.C. Circuit and the Federal Circuit (see Figure 9.3). A court of appeals hears appeals from the U.S. district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. These courts, receiving about 27,000 appellate filings per year, are the last stop for an appeal before it reaches the U.S. Supreme Court.²⁸

The judges who sit on the circuit courts of appeals are nominated by the president and confirmed by the Senate. As with the U.S. district courts, the number of judges in each circuit varies, from six in the First Circuit to 28 in the Ninth, depending on the volume and complexity of the caseload. Each circuit has a chief judge (chosen by seniority or on a rotating basis) who has supervisory responsibilities. Several staff positions aid the judges in conducting the work of the courts of appeals. A circuit executive assists the chief judge in administering the circuit. The clerk's office maintains the records. Each judge is also allowed to hire three law clerks. In deciding cases, the courts of appeals may use rotating three-judge panels. Or by majority vote, all the judges in the circuit may sit together to decide a case or reconsider a panel's decision. Such *en banc* hearings are rare, however.²⁹ Because the U.S. Supreme Court hears so few cases (see next section), the U.S. circuit court decisions are very often the last word on legal issues and, as such, their decisions have great impact in setting legal precedent and in shaping the law for the many people who live within a circuit court's geographic jurisdiction.

U.S. Supreme Court

The **U.S. Supreme Court**, as the highest court in the nation, has ultimate jurisdiction over all federal courts, as well as over state courts in cases involving issues of federal law; it is the final interpreter of federal constitutional law. In the sections that follow, we briefly discuss its jurisdiction, practices, workload, and administration.



The U.S. Supreme Court, in Washington, D.C., is where the Court's nine justices meet, deliberate, and render the law of the land.

Fred Schilling, Collection of the Supreme Court of the United States

Judges and Advocacy

The Supreme Court, formed in 1790, and other federal courts have their basis in Article III, Section 1, of the Constitution, which provides that “the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”³⁰ The Supreme Court is composed of nine justices: one chief justice and eight associate justices. As with other federal judges appointed under Article III, they are nominated to their post by the president and confirmed by the Senate, and they serve for life.³¹ Each new term of the Supreme Court begins, by statute, on the first Monday in October.

Not just any lawyer may advocate a cause before the high court; all who wish to do so must first secure admission to the Supreme Court bar. Applicants must apply and have been admitted to practice in the highest court of their state for a period of at least 3 years (during which time they must not have been the subject of any adverse disciplinary action), and they must appear to the Court to be of good moral and professional character. Applicants must also swear or affirm to act “uprightly and according to law, and . . . support the Constitution of the United States.”³²

Conferences and Workload

The Supreme Court does not meet continuously in formal sessions during its 9-month term. Instead, the Court divides its time into four separate but related activities. First, some amount of time is allocated to reading through the thousands of petitions for review of cases that come annually to the Court—usually during the summer and when the Court is not sitting to hear cases. Second, the Court allocates blocks of time for oral arguments—the live discussion in which lawyers for both sides present their clients’ positions to the justices. During the weeks of oral arguments, the Court sets aside its third allotment of time, for private discussions of how each justice will vote on the cases they have just heard. Time is also allowed for the justices to discuss which additional cases to hear. These private discussions are usually held on Wednesday afternoons and Fridays during the weeks of oral arguments. The justices set aside a fourth block of time to work on writing their opinions.³³

Case Study 9.1

Criminal Law From the U.S. Circuit Courts

In 2010, the U.S. Court of Appeals for the Ninth Circuit (the largest circuit in the country, which includes the heavily populated state of California) heard an appeal from a criminal defendant who was convicted based on evidence the police obtained after placing a GPS tracking device on his car without first obtaining a search warrant. The police placed the device by going to the defendant’s house in the early morning hours and sneaking up the defendant’s rather long driveway to his car parked just outside his garage. They then tracked his vehicular movements, which provided evidence of his marijuana-growing activities. He was convicted and later appealed, claiming the police action was a violation of his Fourth Amendment protections. The Ninth Circuit justices disagreed and ruled the police action was constitutional, enabling law enforcement agencies in similar cases to use GPS tracking without a warrant.

That same year, on the other side of the country, the U.S. Court of Appeals for the D.C. Circuit ruled in a similar case that the use of a GPS tracking device was a search under the Fourth Amendment. The ruling stemmed from a case in which, in 2005, federal officers obtained a search warrant to attach a GPS tracking device to the car of a Washington, D.C., nightclub owner and suspected drug dealer, Antoine Jones. But officers attached the device a day later than the warrant required, and they did so in Maryland rather than in the D.C. jurisdiction the warrant specified. Nonetheless, they tracked Jones for nearly a month and ultimately brought criminal charges against him based on the GPS evidence. Jones was tried in the U.S. District Court for the D.C. Circuit, where his attorneys argued that the GPS tracking violated Jones’s Fourth Amendment protections because the GPS tracking was a “search,” and the device was installed in violation of

the warrant's requirements. The court disagreed with respect to Jones's movements tracked on public streets and areas outside his driveway and home. The GPS evidence was admitted, and Jones was convicted. But the D.C. Circuit reversed, and the effect was a new rule that governed law enforcement in the D.C. Circuit's jurisdiction: Get a warrant before using GPS tracking or risk having tracking evidence thrown out at trial.

After these decisions, the "law of the land" in the Ninth Circuit governed police actions in the states within that circuit, and officers were able to use GPS tracking devices without first obtaining a warrant, whereas in the D.C. Circuit, officers were required to get a warrant. The U.S. Supreme Court then heard the Jones case and ruled in 2012 that law enforcement must first obtain a warrant to use GPS tracking devices on vehicles. But until that ruling was issued, the circuit court decisions differentially affected millions of people and law enforcement officers in their respective jurisdictions.

Sources: See *U.S. v. Jones*, 565 U.S. 400, 132 S.Ct. 945 (2012) and *U.S. v. Pineda-Moreno*, 617 F.3d 1120 (9th Cir. 2010).

The Court has complete discretion to control the nature and number of the cases it reviews by means of the *writ* (order) *of certiorari*—an order from a higher court directing a lower court to send the record of a case for review. The Court considers requests for *writs of certiorari* according to the *rule of four*. If four justices decide to review a case—to “grant cert,” the Court will hear the case. Several criteria are used to decide if a case requires action: First, does the case concern an issue of constitutional or legal importance? Does it fall within the Court's jurisdiction (the Court can hear only cases that are mandated by Congress or the Constitution)? Does the party bringing a case have **standing**—a strong vested interest in the issues raised in the case and in its outcome?³⁴ The Court hears only a tiny fraction of the thousands of petitions that come before it. When it declines to hear a case, the decision of the lower court stands as the final word on it. The Court's caseload has increased over time; today, the Court has 7,000–8,000 cases on the docket per term; plenary review—with oral arguments by attorneys—is granted in about 80 of those cases; and 100 or more cases are disposed by the Court without plenary review.³⁵

Administration

The chief justice orders the business of the Supreme Court and administers the oath of office to the president and vice president upon their inauguration. According to Article I, Section 3, of the Constitution of the United States, the chief justice is also empowered to preside over the Senate if it sits as a court to try an impeachment of the president.

The clerk of the Court serves as the Supreme Court's chief administrative officer, supervising a staff of 30 under the guidance of the chief justice. The marshal of the Court supervises all building operations. The reporter of decisions oversees the printing and publication of the Court's decisions. Other key personnel are the librarian and the public information officer. In addition, each justice is entitled to hire four law clerks, almost always recent top graduates of law schools, many of whom have served clerkships in a lower court the previous year.³⁶

YOU BE THE . . . JUDGE

On a very cold night in Rochester, New York, Barry Kibbe and a friend met Stafford at a bar. Stafford had been drinking so heavily the bartender refused to serve him more alcohol, so Kibbe offered to take him barhopping elsewhere. They visited other bars, and at about 9:30 p.m., Kibbe and his friend drove Stafford to a remote point on a highway and demanded his money. They also forced Stafford to lower his trousers and remove his boots to show he had no money hidden. Stafford was then abandoned on the highway, in the cold. A half-hour later, a man driving his truck down the highway saw Stafford standing in the highway, waving his arms for him to stop. The driver didn't see Stafford

soon enough to stop, and Stafford was struck and killed. Even though the driver of the truck killed Stafford, Kibbe was arrested and charged with robbery and second-degree murder, raising a challenging question of **causation**—a necessary element in holding someone criminally responsible for a death.

State Court Actions: In *State v. Kibbe*, Kibbe was tried and convicted of robbery and murder in the second degree. At trial, the judge did not instruct the jury on the subject of causation (e.g., that the government had to prove Kibbe had actually caused Stafford's death). On appeal to New York's appeals court, in *Kibbe v. Henderson*, Kibbe argued that the judge should have given the jury such an instruction so they would have to determine whether the state had proved this element beyond a reasonable doubt, but the appellate court affirmed his conviction. Then on appeal to New York's supreme court, the conviction was also affirmed. Both courts found the judge did not err in failing to instruct the jury about causation.

Federal Court Actions: Having exhausted all possible state remedies, Kibbe then sought redress in the federal court, filing a writ of *habeas corpus* with the U.S. district court having jurisdiction and arguing that the trial judge had violated his due process rights by not giving the jury instructions regarding causation. The district court denied the habeas petition, saying that no constitutional question had been raised.

Next, Kibbe appealed to the Second U.S. Circuit Court of Appeals, making the same argument. This court, however, reversed his conviction, saying that Kibbe had been deprived of due process because of the trial judge's failure to instruct the jury on causation. Next, the government appealed, this time to the U.S. Supreme Court; in *Henderson v. Kibbe*, the Supreme Court, issuing a writ of certiorari (defined later in this chapter) to the lower court, decided to hear the case.

1. How do you believe the U.S. Supreme Court should rule—for or against Kibbe? Why?
2. Who was Henderson (Kibbe's adversary) in this case?
3. What is meant by "exhausting all possible state remedies"?
4. What is meant by *habeas corpus*?

Answers to these questions are provided in the Notes section at the end of the book.³⁷

MAKING PREPARATIONS: PRETRIAL PROCESSES

A sequence of major events occurs within the U.S. criminal justice system, from the point of entry of the person into the criminal justice system through the related police, courts, and corrections components. Here, we focus on the pretrial process, the events that occur prior to the trial itself.

Booking, Initial Appearance, Bail, and Preliminary Hearing

The criminal justice process is initially engaged when one is arrested. Following that, the accused will then proceed through the steps detailed in the sections that follow.

Booking

Basically a clerical function, **booking** usually involves taking the suspect to a police station or sheriff's office, where they may be fingerprinted, photographed, questioned, read their rights, and possibly be given a bail amount that must be paid in order to gain release until the next stage in the process. Meanwhile, the prosecutor will be sent a copy of the offense report written by the police and will consider whether enough probable cause exists to believe the suspect committed the offense.

Initial Appearance

Within a reasonable time after arrest, the suspect has their **initial appearance** in court, where the judge gives the defendant formal notice of the charge(s), advises the suspect of their rights—including the right to a government-provided attorney if the defendant cannot afford one, and sets bail in appropriate cases. The judge also performs a cursory review of the evidence, and if they do not believe such evidence establishes probable cause that the defendant may have committed the crime

charged, the case will be dismissed. Notice that defendants typically do not enter a plea at this stage because they have not yet been appointed an attorney, so they have not yet had a chance to consult anyone about their case.

Bail

Bail is also known as “pretrial release,” allowing defendants to remain out of jail while awaiting trial and affording them time to help with their defense and to maintain ties with family and their job. But bail is not a right, nor is it guaranteed under the U.S. Constitution. In fact, most state laws provide that bail cannot be granted in cases involving certain violent felonies. If a judge does grant bail, however, the Constitution’s Eighth Amendment prohibits the bail amount from being “excessive.” To ensure a fair decision-making process, a bail hearing is conducted (usually as part of the initial appearance), and the judge must consider a variety of factors, including these:

- The risk that the defendant will flee before trial
- The defendant’s criminal record
- The seriousness of the charges
- The safety of the community

There are several ways to make bail, all of which attempt to ensure the accused will later appear in court and most of which require a financial commitment from defendants or their family or friends. The court typically requires either cash or a bond, the latter of which is basically an insurance policy the defendant buys insuring their appearance. Defendants can “make bail” directly with some courts, but in other jurisdictions, the defendant will have to get a bond through a bail bond company, which typically requires a nonrefundable payment of 10% of the bail amount. Either way, if the defendant fails to appear in court, the court issues a warrant for the defendant’s arrest, and they lose any money posted with the court.

The bail decision can be critical for criminal defendants. Again, pretrial release affords defendants the chance to keep their jobs, maintain family and community ties, and to assist with their defense.

Being denied bail—pretrial detention—can be devastating on all these fronts, and it can provide prosecutors and police better access to the defendant for continued questioning and investigation (subject to certain *Miranda* limitations). So it is important to consider what types of defendants are detained and whether the process is truly fair.

In 2015, researchers released findings showing the bail decision is unfairly affecting people within underrepresented communities, with African American defendants being detained 4 times more often than whites.³⁸ The same study concluded that 75% of people held in pretrial detention are there for nonviolent offenses, but they simply cannot afford bail so they are incarcerated in county jails until their cases are resolved. Indeed, 69% of jail populations are unconvicted defendants awaiting trial.³⁹ Therefore, the bail decision affects not only defendants but also our already-overcrowded jails and the criminal justice professionals tasked with keeping those populations secure. Recent bail reform measures have prohibited judges from detaining people for less serious charges. In New York between July 2020 and June 2021, 98,145 individuals were released without bail based on such measures. Nearly one third were rearrested while their initial case was pending, mostly for misdemeanors and nonviolent felonies, although 3,460 were arrested on violent felony charges—773 of which involved a firearm.⁴⁰



Bail bonds operations are commonly located near county jails to serve criminal defendants seeking freedom on bail while their cases are pending. Judges and bail bond agents use similar criteria in making decisions about bail.

Preliminary Hearing

The **preliminary hearing** (which the defendant may choose to waive in some jurisdictions) allows a judge (no jury is present) to decide whether probable cause is sufficient against the person charged to proceed to trial. The prosecutor will offer physical evidence and testimony to try to get the accused “bound over” for trial while the defense offers counterevidence. If the judge finds enough probable cause, they will order the accused to appear at trial to answer the state’s formal charges, which the prosecutor will file in the form of an “information” (versus an indictment, discussed in the next section). The preliminary hearing can help the accused and their counsel to prepare for trial because they are able to hear much of the state’s case. But as discussed in the next section, in some states the prosecutor avoids this effect by presenting the case before a secretive grand jury.

Grand Juries

The primary function of the modern **grand jury** is to review the evidence presented by the prosecutor and to determine whether there is probable cause to return an indictment. Although all states have some form of the grand jury, only about half of all states use grand juries routinely to bring formal charges rather than relying solely on a prosecutor’s decision (or after a preliminary hearing).⁴¹ The prosecutor presents evidence to the grand jury, and much like the judge in a preliminary hearing, the grand jury must find probable cause to charge the defendant with a crime. If that happens, the grand jury issues an “indictment”—a formal charge—and trial (or plea bargaining) will ensue.

The importance of the grand jury function cannot be overstated because, without an indictment, the state cannot move forward with criminal charges against a defendant. Consider the 2014 case from Ferguson, Missouri, where a white Ferguson police officer, Darren Wilson, shot and killed unarmed, 18-year-old Michael Brown during an encounter in the street. The case sparked intense media coverage and debate over police–citizen race relations and the appropriate use of police force in encounters with unarmed suspects, with many people assuming Wilson had acted criminally because Brown was unarmed. The case against Wilson went to a St. Louis County grand jury, which—after 25 days of hearing testimony and reviewing evidence—determined there was not enough probable cause to conclude that Wilson acted criminally. But the Brown–Wilson proceedings were different from a typical grand jury review in several ways: The prosecutor did not recommend charges against Wilson, more than 60 witnesses testified (versus the typical three or four), and Officer Wilson himself testified for more than 4 hours.⁴² Some observers believe that, in cases like Wilson’s, the state effectively “tries” the case but without the public oversight of a typical criminal trial, and, in that way, the grand jury role can be significant. This argument was reiterated following the grand jury’s decision not to charge police officers involved in the fatal shooting of Breonna Taylor in Louisville, Kentucky.⁴³

Although the use of grand juries and their roles vary across states, the Fifth Amendment to the U.S. Constitution requires a grand jury indictment for *all* federal criminal charges. For federal cases involving complex and long-term investigations (such as those involving organized crime, drug conspiracies, or political corruption), “long-term” grand juries will be impaneled. In most jurisdictions, grand jurors are drawn from the same pool of potential jurors as are any other jury panels and in the same manner. But unlike potential jurors in regular trials, grand jurors are not screened for biases or other improper factors.

The Federal Rules of Criminal Procedure provide that the prosecutor, grand jurors, and the grand jury stenographer are prohibited from disclosing what happened before the grand jury, unless ordered to do so in a judicial proceeding. Secrecy prevents the escape of people whose indictment may be contemplated, ensures that the grand jury can deliberate without outside pressure, prevents witness tampering prior to trial, and encourages people with information about a crime to speak freely.

A prosecutor can obtain a subpoena to compel anyone to testify before a grand jury, without showing probable cause and, in most jurisdictions, without even showing that the person subpoenaed is likely to have relevant information.

In the federal system, a witness cannot have their lawyer present in the grand jury room, although witnesses may interrupt their testimony and leave the grand jury room to consult with their lawyer. A few states do allow a lawyer to accompany the witness. A witness who refuses to appear before the grand jury risks being held in contempt of the court.

If the grand jury refuses to return an indictment, the prosecutor can try again; double jeopardy does not apply to a grand jury proceeding. No judge is present in the grand jury room when testimony is being taken.⁴⁴

Arraignment

After being formally charged, the accused will again be advised of their rights and is asked to enter a formal plea. A defendant may plead not guilty, guilty, or no contest (also known as *nolo contendere*). A not-guilty plea means the defendant claims innocence and is forcing the state to prove its case at trial, whereas a guilty plea relieves the state of that burden, and the defendant is convicted without trial. The *nolo* plea is unique in that it allows a defendant to plead guilty for purposes of avoiding trial, but the plea cannot be used against them later in a civil case (because technically he has not admitted guilt). The court must always approve a plea of *nolo contendere*.

If the plea at arraignment is not guilty, a trial must occur (unless plea bargaining takes place).

Plea Negotiation

When defendants enter a guilty or no contest plea, they often do so through a **plea negotiation**, or *plea bargaining*. In fact, the great majority of criminal convictions—typically more than 90%—are obtained through plea deals, without any courtroom fact-finding. In essence, in exchange for the defendant's plea of guilty, the government is willing to give the defendant certain concessions.

There are several forms of plea bargaining. The accused can engage in *charge bargaining* (offering to plead guilty to a lesser offense than the one charged, thus hoping for a lighter sentence), *count bargaining* (pleading guilty to, say, three of the charged counts and having the remaining six counts thrown out), or negotiating how they will serve an imposed sentence (e.g., two 5-year terms to be served concurrently, as opposed to consecutively).

As the defendant benefits from plea bargaining, so does the government. First, criminal court dockets in most jurisdictions are seriously overburdened and the state simply cannot take every case to trial, so there is great pressure to resolve cases out of court. Further, the prosecutor “wins” a conviction while reducing the time, money, and uncertainty involved in taking the case to trial, whereas a jury may acquit because the defense produces unanticipated evidence or witnesses. The process also eases the burden on witnesses and prospective jurors and can reduce the overcrowding of jails by more quickly funneling persons who have committed offenses out of pretrial detention and into prison or some form of community corrections.

Certainly, there are many reasons why a high percentage of cases are bargained out of the system, and one can only imagine the havoc that would be caused in the court system if 9 of 10 cases that are plea bargained had to be tried. However, by signing the deal and pleading guilty, the defendant waives several constitutional protections. But consider the realities of a typical barroom killing. There might be evidence of premeditation and malice that is sufficient to justify a jury verdict of murder in the first degree. Or the defendant's longtime status as someone who abuses alcohol might convince the jury he was unable to form the necessary intent to be heavily punished. Perhaps the defendant may indicate he acted in the “heat of passion,” pointing to a verdict of manslaughter or even that he acted in self-defense. When such cases are given to the jury to decide, a variety of outcomes are possible. Therefore, plea negotiations allow the prosecutor and the defense to arrive at some middle ground of what experience has shown to be “justice” without the defense running the risk of heavy punishment for the defendant and the government not having to devote many days to trial—with the risk of the defendant's being acquitted.⁴⁵

Some authors believe plea bargaining reduces the courthouse to something akin to a Turkish bazaar, where people barter over the price of copper jugs. They see it as justice on the cheap. Others believe that plea bargaining works to make the job of the judge, the prosecutor, and the defense attorney much easier, while sparing the criminal justice system the expense and time needed to conduct many more trials.

No matter where one stands on the issue, however, it is ironic that, in general, both police and civil libertarians oppose plea bargaining. Police and others in the crime control camp view

plea bargaining as undesirable because defendants can avoid conviction and responsibility for crimes they committed when allowed to plead guilty to (and be sentenced for) lesser and/or fewer charges; police, in the crime control camp, would prefer to see the defendant convicted for the crime committed.

Civil libertarians and other supporters of the due process model also oppose plea bargaining, but for different reasons: When agreeing to negotiate a plea, the accused forfeits a long list of legal protections afforded under the Bill of Rights: the presumption of innocence; the government's burden of proof (beyond a reasonable doubt); and the right to face one's accuser, testify, and present witnesses in one's defense, the right to have an attorney and a trial by jury (except for lesser offenses), and the right to an appeal if convicted. Another concern is that an innocent defendant might be forced to enter a plea of guilty because of the threat of trial or police and prosecutorial coercion.

It is important to consider both positions. In our quest for justice, we must ask whether plea bargaining sacrifices too many of the defendant's rights. We must also ask if plea bargaining impedes justice by giving too many benefits to guilty persons.

Jury Trials

Most civilizations—even the most primitive in nature—have used some means to get at the truth: to tell right from wrong, guilt from innocence, and so forth. In Burma, each suspected party to a crime had to light a candle, and the person whose candle burned the longest was not punished.⁴⁶ In Borneo, suspects poured lime juice on a shellfish; whoever's shellfish squirmed first was the guilty party.⁴⁷ The “trial by ordeal” method was also used around the world, with people's guilt or innocence determined by subjecting them to a painful task (often using fire and water); the idea was that God would intercede and help the innocent by performing a miracle on their behalf.⁴⁸



Criminal trials in the United States often involve a jury of one's peers to hear the evidence; then, if rendering a conviction, the same jury may be used to determine the proper form and extent of punishment.

©iStockphoto.com/Image Source

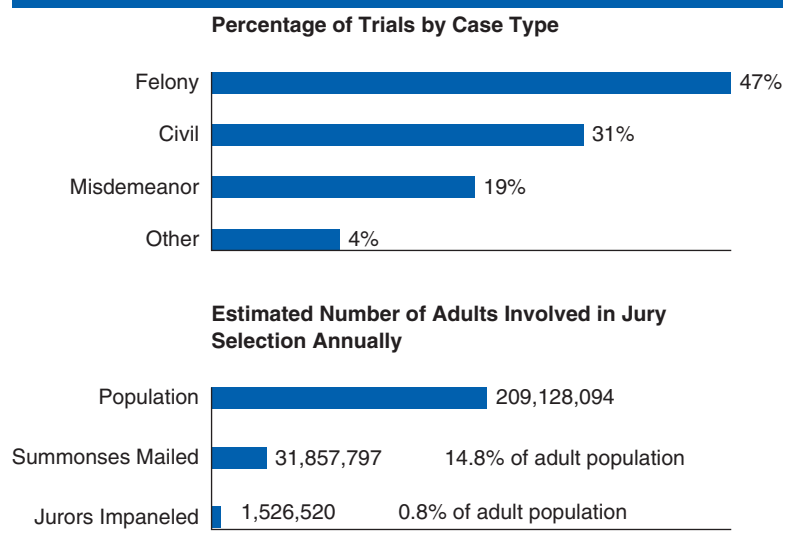
The Sixth Amendment to the U.S. Constitution ensures that our method is more civilized, guaranteeing the defendant a trial by an impartial jury of their peers. Many people view the jury as the most sacred aspect of our criminal justice system because common citizens determine the truth and assess punishment. Not all criminal defendants are guaranteed a right to trial by jury (i.e., if charged with a *lesser misdemeanor*—one that has a penalty of less than 6 months in jail); furthermore, the defendant may waive the right to a jury trial and be tried by a judge alone (known as a *bench trial*).

There are advantages and disadvantages to each, and a wise defendant will want to discuss them with an attorney.

The method of selecting citizen *peers* to hear the evidence is important. First, in most states a questionnaire is mailed to people (whose names were obtained from voter, taxpayer, driver, or other lists) to determine who is qualified to serve, with certain exemptions given to specific groups. Those who are qualified to serve are then sent a *summons* to appear and form a jury pool, from which a smaller number of prospective jurors is selected for a process known as *voir dire* (“to speak the truth”), where the prosecutor and defense attorney question and screen pool members to determine whether they can be fair and impartial and decide the case based on the evidence presented. With the judge overseeing the selection process, both the prosecution and the defense can challenge and have removed an unlimited number of jurors *for cause*, meaning for some reason one is prejudiced against their side. But both the prosecution and the defense also receive a limited number of *peremptory challenges* (usually set by statute), which allow them to remove jurors without any reason or explanation.

Generally, 12 jurors and two alternates are selected for a criminal trial, but that number is not required by the Constitution. In *Williams v. Florida*, the U.S. Supreme Court observed that the decision to fix the size of a jury at 12 “appears to have been a historical accident” and that a six-member jury satisfied the constitutional requirement.⁴⁹ Nor is a unanimous verdict by the jury required by either the U.S. Constitution or the U.S. Supreme Court, so in some states a majority of “votes” from the jurors will support a verdict.⁵⁰ Figure 9.4 shows several aspects of jury service and trials in the United States as reported by the Center for Jury Studies: the estimated number of jury trials, the percentage of actual trials by case type, and the estimated number of adults involved in jury service each year.

FIGURE 9.4 ■ Jury Trials and Service in United States



Note: This estimate was extrapolated using survey results for 1,546 counties representing 70% of the U.S. population.

Source: Reprinted with permission from The National Center for State Courts, Center for Jury Studies.

YOU BE THE . . . DEFENSE ATTORNEY

In 2001, Michael Vick rose to national fame as a star quarterback with the NFL's Atlanta Falcons—the first African American player to be selected in the first round of the NFL draft. Vick then had six successful seasons with the Falcons, going to the playoffs twice and being selected to three Pro Bowls. But in 2007, Vick was implicated in an illegal dog-fighting operation in his home state of Virginia. Federal and state law enforcement authorities found evidence of an extensive dog-fighting

venue at Vick's sprawling rural compound, along with evidence of illegal interstate activities, including dog trafficking, online betting, and drug sales. Authorities also found evidence of dog torture and killings, and Vick was soon charged with breaking a host of both Virginia state laws and federal laws.

With his NFL career in shambles, Vick faced prosecution in both venues of our dual-court system, and many observers asked where Vick would first answer for his alleged crimes and would he—could he—be brought to justice twice, raising questions of double jeopardy under the Fifth Amendment to the U.S. Constitution. The U.S. government took the lead in prosecuting Vick first. He was granted bail with certain conditions, including drug testing. He was indicted by a federal grand jury, meaning the government could proceed with formal charges against him. Facing such charges and the prospect of extensive evidence of his illegal activities and brutality against the dogs used in his fighting operations, what would you have recommended as Vick's defense attorney?

1. Would you have recommended he seek a plea deal (meaning, a plea negotiation) rather than take the case before a jury? Why?
2. What would have been the pros and cons of pursuing a jury trial, given the facts of this case?
3. More about the outcome of this case is provided in the Notes section at the end of the book.⁵¹

Source: CNN Library, *Michael Vick Fast Facts*, November 10, 2014, <http://www.cnn.com/2013/06/24/us/michael-vick-fast-facts/>.

Pretrial Motions

Prior to the trial, either the defendant or the prosecutor may file **pretrial motions/processes** with the court to be better positioned for trial. Defense motions include requests to suppress evidence (e.g., the defense believes that a police search, physical evidence, or a confession was obtained illegally), to reduce bail (if the accused is still in jail awaiting trial), to conduct discovery (discussed in the next section), to change venue (to move the trial to another city, if a highly publicized or emotional crime is charged), and to delay trial (known as a “continuance”).

Discovery

No member of the court work group—including judges, prosecutors, and defense attorneys—likes major surprises or “bombshell” evidence coming to light in the courtroom. **Discovery** is simply the exchange of information between prosecution and defense, to promote a fair adversarial contest between the two sides and help the truth come to light. Essentially, each side is entitled to learn the other's strengths and weaknesses as well as the evidence and theories on which each will rely.

Discovery has become quite controversial in recent years, with prosecutors often being accused of withholding evidence that should have been provided to the defense, to the point that many jurisdictions have individuals—typically attorneys, skilled in the laws of evidence—serving as “discovery masters” to ensure fair exchange of information by both sides. Generally, the prosecution has a higher burden of providing “exculpatory” evidence (that which tends to support the defendant's innocence).⁵² However, because the U.S. Supreme Court has required the prosecution to disclose only evidence that is both material and exculpatory, this has become a confusing area of law and formal/informal policy—with some states adopting conservative, others liberal, and still others middle-ground rules of discovery⁵³—so the question of what is to be exchanged is not always clear-cut.



Ray Tensing, a white University of Cincinnati police officer, shot and killed Samuel DuBose, an unarmed black motorist, after DuBose tried to drive away during a traffic stop. Tensing was wearing this shirt under his uniform. The county judge agreed with Tensing's defense attorneys that the shirt was prejudicial and would not allow prosecutors to admit the shirt into evidence.

AP Photo/Cara Owsley

Diversion Programs/Problem-Solving Courts

The increasing number of criminal cases in our already-overburdened courts, together with the high recidivism (reoffending) rate, has spawned a number of alternative courts and **diversion programs** around the country, including drug courts, mental health courts, veterans' courts, and even some courts dedicated to persons with gambling addictions. By 2019, more than 1,600 adult drug courts accounted for more than half of all problem-solving courts operating in the United States.⁵⁴ More than 300 mental health courts operate in most U.S. jurisdictions.⁵⁵ The National Drug Court Institute suggests that many more adult drug courts, veterans' treatment courts, family drug courts, and hybrid drug/DUI courts will be established over the next few years.⁵⁶ These "problem-solving" courts allow eligible defendants—typically persons who offend for the first-time and are nonviolent—to move their cases to a court where specialized court professionals (prosecutors, defense attorneys, judges, social workers, physicians, and treatment professionals) can better address the unique features of these defendants and their cases.

The model for these specialty courts is similar across jurisdictions, utilizing either a pre-plea or post-plea process. In the former instance, a defendant demonstrates eligibility for the court's services and is not required to plead guilty but is diverted to the specialty court's program. In the latter instance, the defendant is diverted to the court's program after an initial guilty plea. In both models, defendants are then given the opportunity to complete a program to treat the problems that landed them in criminal trouble in the first place: drug rehabilitation for the person abusing drugs; mental health counseling/medication for the person who is mentally ill; and specialized debriefing/counseling for military veterans, most of whom are suffering from post-traumatic stress disorder (PTSD) and other postcombat issues. If the defendant successfully completes the court-ordered "program," the charges are dropped (for a pre-plea case) or the guilty plea is vacated (in a post-plea case). If the defendant fails to carry out their end of the court agreement, the state can pursue the original criminal charges, and the defendant will risk a conviction and a possible jail or prison sentence.

Research indicates that many of these courts, particularly drug courts, are succeeding in providing treatment and reducing recidivism. Many drug courts report an average of 8% to 14% lower recidivism rates than other justice system responses, with some of the best courts yielding a 35% to 80% lower rate. The long-term effects of such programs appear to be promising as well, with positive effects (non-recidivism, or remaining "clean") lasting from 3 years to 14 years in some cases.⁵⁷



Amanda Nagel hugs her 9-month-old daughter, Alexis, while waiting to appear in drug court in Placer County, California. Nagel, who had been arrested on a methamphetamine charge, told the judge she wants to go straight and stay out of jail to take care of her daughter. Drug courts, mental health courts, and veterans' courts are just a few of the specialty courts operating across the country to divert low-risk offenders out of the criminal justice system.

©AP Photo/Rich Pedroncelli

THE TRIAL PROCESS

After all pretrial processes have been addressed, the next challenge is to get the case into the courtroom in a timely manner and then see that certain rules are followed with defendants' rights protected. This **trial process** is described in the sections that follow.

Right to a Speedy Trial: “Justice Delayed . . .”

“Swift justice” is a term that is well emblazoned in our collective psyche—and has even been the title for several books, movies, and even some television series. Bringing persons who have committed crimes to justice in a timely manner is felt to be essential to sending a meaningful message to these persons, to convey a message of deterrence to the general public, to maintain public confidence in the judicial process, and generally to help the criminal justice system better do its job.

Similarly, the adage that “justice delayed is justice denied” says much about the long-standing goal of processing court cases with due deliberate speed. Charles Dickens condemned the practice of slow litigation in 19th-century England.⁵⁸ Dickens was considerably harsh toward England's Chancery Courts in his novel *Bleak House*,⁵⁹ and Shakespeare mentioned “the law's delay” in *Hamlet*.⁶⁰ Most important, even our Founding Fathers saw fit to hasten the movement of criminal matters into the courtroom: The Sixth Amendment to the Constitution states in part, that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. As a result, the consequences of **delay** to society are potentially severe. The U.S. Supreme Court has ruled that if the defendant's right to a speedy trial has been violated, then the indictment must be dismissed and/or the conviction overturned.⁶¹ Certainly, some criminal defendants want their trial dates delayed (or continued) as long as possible—giving time for the community's emotions surrounding the crime to subside, the memories of its victims and witnesses to fade, and the defense to uncover further evidence. Others, however—particularly those who cannot post bail and are awaiting trial in a jail and/or have jobs and family to return to—want their day in court to arrive as soon as possible.

But what does a “speedy trial” mean in practice, and how does an appellate court know if the right has been denied? Those questions have been addressed at the *federal* level, with Congress enacting the **Speedy Trial Act of 1974**.⁶² This act mandates a 30-day limit from the point of arrest to indictment and 70 days from indictment to trial. Thus, federal prosecutors have a total of 100 days from the time of arrest until trial.

However, there is very little in the way of fixed, enforced time limits at the *state* level, and the U.S. Supreme Court has refused to give the concept of a “speedy trial” any precise time frame.⁶³ Also, where they exist, most state laws fail to provide the courts with adequate and effective enforcement mechanisms; furthermore, if a prosecutor has clearly taken an excessively long amount of time to bring a case to trial, existing time limits may be waived due to the court's own congested dockets. As a result, there are no “teeth” in state statutes concerning time limits, so state-level speedy trial laws are often not followed in practice.

The concern, then, is with *unnecessary* delay. Where a court must determine whether the defendant's right to a speedy trial was violated, the Supreme Court in *Barker v. Wingo* established the following test⁶⁴:

- *Length of delay*: A delay of a year or more from the date of arrest or indictment, whichever occurs first, was termed “presumptively prejudicial”; however, as noted earlier, the Supreme Court has never explicitly ruled that any absolute time limit applies.
- *Reason for the delay*: The prosecution may not excessively delay the trial for its own advantage; however, a trial may be delayed for good reason, such as to secure the presence of a key witness.
- *Time and manner in which the defendant has asserted his right*: If a defendant agrees to the delay when it works to his own benefit, he cannot later claim that he has been unduly delayed.
- *Degree of prejudice to the defendant that the delay has caused*: Delays can affect evidence and impair the defense; for example, witnesses might die, move away, or their memories fade; records or evidence can be lost or destroyed.⁶⁵

In *Doggett v. United States*, the court ruled that long delays, regardless of the reason—even if unintentional—harm the defendant. In this case, the defendant was arrested more than 8 years after being indicted on federal drug charges. In a 5–4 decision, the U.S. Supreme Court held that the government’s failure to locate and prosecute Doggett in a timely manner violated his Sixth Amendment rights.⁶⁶

Trial Protocols

After the judge has given the jury its preliminary instructions—emphasizing that the defendant is presumed innocent until proven guilty—and other pretrial issues have been settled, typically the pattern of the trial process is as follows:

1. *Opening statements:* The prosecutor goes first, as they have the burden of proof (and must prove every element of the crimes charged—beyond a reasonable doubt), followed by the defense (although in many jurisdictions the defense can opt to defer making its opening statements until later, when it presents its main case, or waive it altogether). The purpose of this step is to succinctly outline the facts they will try to prove during the trial—and it is *not* a time to argue with the other side.
2. *Prosecution’s case:* The prosecution will present its side of the case, presenting and questioning its witnesses and admitting relevant evidence. The defense may cross-examine these prosecution witnesses. A “redirect” allows the prosecution to reexamine its witnesses. Once the prosecution has finished presenting its evidence, it will rest its case.
3. *Motion to dismiss:* As a formality, at this point during a criminal trial the defense will often make a motion to dismiss all charges, arguing that the state has not proved its case and, that being so, there is no need for the defense to put on its case. This request is generally denied by the judge, opening the way for the defense case.
4. *Defense’s case:* Next, the defense presents its main case through direct examination of its chosen witnesses. The prosecution is then given an opportunity to cross-examine the defense witnesses, and during redirect, the defense may reexamine its witnesses. Defendants cannot be compelled to testify against themselves but have the right to testify in their own defense if so desired. The defense then rests. Because defendants are presumed innocent until proven guilty, the defense is not required to put on a case at all. If the defense does not have good evidence or a basis for cross-examination of the state’s witnesses, the defense can simply rest, and the jury or judge will have to decide if the state has proven its case beyond a reasonable doubt.
5. *Prosecution rebuttal:* The prosecution may offer evidence to refute the arguments made by the defense.
6. *Closing arguments:* This is a time for both sides to review the evidence so that it is clear to the jury before they begin their deliberations. The order of closing arguments varies by jurisdiction. In some jurisdictions, the state always argues first, but in others, the defense does.⁶⁷ The prosecution will offer reasons why the evidence proves the defendant’s guilt, and the defense will explain why the defendant should be acquitted. This is *not* the time for the prosecutor to offer personal opinion, make inflammatory or discriminatory remarks, or comment on the defendant’s failure to testify. Such misconduct may result in a reversal of a conviction on appeal.
7. *Jury instructions:* The judge’s instructions to the jury are important and, if improper, may later be grounds for a reversal and new trial. Also known as “charging the jury,” the judge will explain the law that is applicable to that particular criminal case and the possible verdicts; the judge will also typically include general comments concerning the presumption of the defendant’s innocence, that guilt be proved beyond a reasonable doubt, and that the jury may not draw inferences from the fact that the defendant did not testify in their own behalf.

8. *Jury deliberations and verdict:* The jury will deliberate for as long as it takes to reach a verdict. In most states, unanimous agreement must be met for a verdict to be reached (however, as noted earlier, a unanimous verdict is not required by the Constitution). Once the jury has determined its verdict, either guilty or not guilty for each crime in question, the verdict will be read to the court. Then, either side, or the judge, may “poll the jury,” asking all jurors individually if the verdict as read is theirs; if not unanimous, the jury may be returned to its room to deliberate again or be discharged. If the jury acquits the defendant, the case is over. The prosecutor cannot appeal an acquittal because of the Fifth Amendment protection against double jeopardy. The jury may, instead, convict the defendant of some charges while acquitting them of others.
9. *Posttrial motions:* If the jury delivers a guilty verdict, the defense will usually ask the judge to override the jury’s decision and acquit the defendant or grant them a new trial. This motion is almost always denied.
 - *Sentencing:* If the defendant was convicted of the crime(s), sentencing will be determined by the judge immediately after the verdict is read or at a later court date. In arriving at a sentence, the judge generally orders a presentence investigation report (PSI) by probation or court services personnel to look at the history of the person convicted, any extenuating circumstances, a review of their criminal record, and a review of the specific facts of the crime. The person or agency preparing the PSI makes a recommendation to the court about the type and severity of the sentence. The judge may, however, be limited by federal and state sentencing guidelines; some crimes carry a mandatory minimum sentencing requirement, while other sentences may be based largely on the discretion of the judge.



Michelle Carter, 20, encouraged her boyfriend through text messages and phone calls to kill himself, which he did. At trial, Carter’s defense team argued for acquittal, as there were no laws against encouraging suicide. Carter was convicted of involuntary manslaughter in June 2017. After Massachusetts’s highest court upheld her conviction, her attorneys appealed to the U.S. Supreme Court, which denied her appeal in July 2020.

AP Photo/Glenn C. Silva

- *Punishments:* After a conviction and upon receiving the PSI or using sentencing guidelines, the judge may opt for one of the following punishments:
 - Incarceration
 - Probation
 - Fines
 - Restitution
 - Community service
- 10. *Appeal:* After conviction, the defendant may challenge the outcome. Potential grounds for appeal in a criminal case include legal error (e.g., improperly admitted evidence, improper jury instructions), juror misconduct, ineffective counsel, or lack of sufficient evidence to support a

guilty verdict. If this error affected the outcome of the case, the appeal is granted—the conviction is overturned—and, in some instances, the case is remanded back to the trial court, and a retrial is ordered (the prosecutor may choose to drop charges if facing a retrial without key evidence, for example). If the appeals court finds that the error(s) would not have affected the outcome, then the errors are considered harmless, and the appeal is denied.⁶⁸ Note also that, for the *first* appeal, the U.S. Supreme Court has said that if the person convicted is indigent, then free, appointed counsel must be provided.⁶⁹ However, the Court ruled later that, after losing the initial appeal, the convicted person is *not* entitled to free appointed counsel for any subsequent appeals.⁷⁰

Case Study 9.2

An Insider's View of a Lower Court

The Honorable Kevin Higgins, a lower court judge in Nevada, provided compelling realism and insight—as well as a bit of humor—in describing the workings and proper decorum of people and lawyers who are about to litigate cases in his courtroom:

We tend to be the fast-food operators of the court system—high volumes of traffic for short visits with a base of loyal repeat customers. Don't plan on having a private conversation with your client or a witness amidst the throngs of other people trying to do the same thing. Prepared attorneys can be in and out in short order. Meeting your client for the first time after calling out his name in the lobby can take longer.

Patience is a virtue and communication with the bailiffs and court staff will keep everyone happy. We coordinate the court's calendar, your calendar, and opposing counsel's calendar with the availability of the witnesses.

Here are a few other “do's” and “don'ts” for successfully navigating this Court:

- Everyone goes through the metal detector. Having to go back to your car to stow your Leatherman [a pocketknife/multi-tool], linoleum cutting knife, stun gun, giant padlock or sword-cane (all items caught by security) can be annoying.
- I once ruled against a very sweet elderly lady who reminded me of my own grandmother. She simply didn't have a case, and I thought I had ruled fairly and gently. As she slowly walked by the front of the bench on the way out of the courtroom, she looked up and said, “Aw, go _____ yourself,” and walked out the door. My mouth was hanging open; I just didn't know what to do. I'm fairly sure that this is the first and last time someone will get away with this, so even if the judge rules against you, smile on the way out. You can mutter to yourself all you want on the way back to the office rather than the holding cell in the back of the courthouse.
- I once watched a gentleman in the back row feed his parrot peanuts while it was sitting on his shoulder. I assumed I had a parrot case in the pile somewhere, but after the last case was called, the parrot left without testifying. I asked the security officer why he let the man with the parrot come into court. I was told that the man had been there to watch a friend's case and that his sick parrot needed to be fed every 15 minutes. While admiring the logic of his decision, I have advised our new court security officers that unless an animal is actually a service animal, various beasts, fish, and fowl are not allowed in simply to watch court.
- Expect the unexpected. Recent interesting events include a live pipe bomb being left at the front door by a concerned citizen; a gentleman dancing on top of his motor home in the parking lot while his laundry hung from the trees and his morning coffee perked on the propane stove he had set up in the next space; and the occasional ammonia discharges into the holding cell by one of the neighboring businesses.

Are you surprised by Judge Higgins's comments concerning the way some people conduct themselves in a court of law?

Source: Adapted from Hon. Kevin Higgins, “An Insider's View of Justice Court,” *Nevada Lawyer* 16, no. 8 (August 2008), p. 21. Reprinted with permission from Judge Kevin G. Higgins.

TECHNOLOGIES IN THE COURTS

Like the police, the courts are unveiling new technologies that it is hoped will provide more efficient and effective operations. The COVID-19 pandemic necessitated the use of technologies to allow dispensing of “remote justice.” Some of those technologies are described in the sections that follow.



Raymond Dargan, 20, of New Brunswick, New Jersey, is arraigned on burglary and robbery charges at the Hunterdon County Jail via videoconference. Conducting initial appearances and arraignments via videoconference is increasingly common, especially in metropolitan areas where the courts and jails process record numbers of offenders.

©AP Photo/Star Ledger, Pool

Achieving Paper on Demand

A major goal for all courts in the United States is to go “paper on demand” (POD)—denoting an environment in which the routine use of paper no longer exists in general. Rather, paper documents may be used for court business only rarely and as a last resort. The ultimate goal is that there be no more lost files, all receipts be issued electronically, all police citations be issued electronically, all filing formats and forms be standardized, all judges use POD, and there be no more folders in the courtroom.

Toward that end, electronic case filing has been possible for many years and allows courts to realize dramatic increases in efficiency and reductions in related costs—in clerical staff alone. Electronic filing also enables some court services—such as the payment of fines and fees, collection of fines and penalties, provision of case information and documents to the public, and jury management—to be centralized or regionalized for improved efficiency and service. In addition, an electronic case file enables a court to better distribute its workload across the system.

Emerging Technologies

The following paragraphs discuss five other areas in which court technologies are emerging or have already been put in place:

- *Digital recording:* Significant savings can be realized by replacing court stenographers with digital audio- or video-recording equipment. Many states have used digital recording extensively, and some states have used digital recording exclusively for many years without experiencing significant issues.
- *Use of tablets and apps to present evidence:* The Federal Judicial Center⁷¹ highlights the Chambers Online Automation Training (COAT) program. This program provides online

training modules to teach judges and other court staff how to use court technology effectively. Currently available training includes information on connecting to chambers from remote locations, computer security, courtroom technology, and the use of tablet devices (e.g., iPads).⁷² The proliferation and relatively low cost of tablet devices are changing the way in which attorneys present evidence in the courtroom. For example, prosecutors in the San Diego County District Attorney's Office use TrialPad, an iPad application, that allows jurors to examine photos, videos, audio files, and transcripts on large courtroom screens and replaces expensive, single-use exhibit boards.⁷³

- *Annotation monitors:* In addition to widely adopted large, flat-screen, high-definition monitors that attorneys use to display images to jurors (instead of using traditional projectors and screens), annotation monitors allow witnesses to mark an exhibit with notations. These marked exhibits can be preserved for later viewing during jury deliberations. More recently, these systems are being replaced by tablet devices with annotation capabilities.
- *Evidence cameras:* During in-court proceedings, an evidence camera can instantaneously convert a paper document or physical exhibit to an electronic image for monitor display. An evidence camera can enlarge small physical items (e.g., a four-inch-by-six-inch photograph or wristwatch face) for all courtroom participants to see.⁷⁴
- *Conducting hearings via videoconferencing:* Videoconferencing has improved rapidly in both cost and quality over the past few years. Prices for basic capabilities have been reduced considerably, and the quality of the networks has improved steadily.

Related to the fifth area of emerging technology, most hearings involving videoconference prior to 2020 were conducted semiremotelly, meaning the proceeding was still held in the courtroom, but one or more participants (usually a witness or the defendant) appeared in the court via live-streaming video. During the height of the COVID-19 pandemic, courts adapted by holding fully remote hearings, where all individuals involved in the trial participate from remote locations. This adaptation allowed courts to continue processing cases, although issues of fairness (perceptions of legitimacy associated with fully remote trials) and public access (physical courtrooms are generally open to the public) were raised during this time.⁷⁵ In response, the National Center for State Courts released a guide to provide judges with strategies to increase perceptions of procedural justice during remote hearings.⁷⁶

Educational institutions are helping to introduce new courtroom technologies. The National Judicial College in Reno, Nevada, offers its students access to its "Model Courtroom," which offers hands-on experience with some of the latest courtroom technologies. Persons can plug in their laptops to refer to notes; retrieve documents, charts, and photographs; and forward evidentiary material digitally to the presiding judge's monitor. Evidence can be shown on the LCD displays where court participants are sitting: the jury box/room, the attorneys' lectern, or the witness stand. Video/audio feeds may also be relayed to the media room for reporters covering the trial, the attorney conference room (where a victim may choose to view the trial away from the defendant), and a remote-site language interpreter. During trials, attorneys and witnesses may employ the LCD's touchscreen technology to provide annotations on evidence. Cameras, evidence presentation tools, monitors, and computer hardware and software serve to introduce students to new technologies in a dynamic learning center. Instructional sessions can be viewed in real time by registrants with a computer and internet capability, and mock trials can be streamed. The National Judicial College fields questions from court personnel across the country seeking input about incorporating technology into their own courtrooms.⁷⁷

IN A NUTSHELL

- As the population of the U.S. colonies grew, formal courts of law appeared based on the English system; however, fearing tyranny from this concentration of governmental power, a federal judiciary was created that was separate from the legislative branch of government. We now have the dual-court system—one implemented by the state courts, the other created by Congress and entrusted to the federal courts.

- The policy decisions of the courts affect virtually all of us in our daily living. Perhaps nowhere have the nation's courts had more of an impact than in the prisons.
- The courts must appear to do justice—and provide rights that are embodied in the due process clause. Our court system relies on the adversarial system, using several means to get at the truth: Evidence is tested through cross-examination of witnesses, and power is lodged with several different people. This series of checks and balances is aimed at curbing misuse of the criminal courts.
- Each state has a court of last resort, all but eight states have an appellate court, and there are trial courts of general jurisdiction that decide all matters not specifically delegated to lower courts.
- Lower state trial courts have limited jurisdiction, but after an arrest, the judge conducts the initial appearance, appoints counsel for indigents, and conducts the preliminary hearing.
- There are 94 U.S. district courts, which are trial courts of original jurisdiction for all major violations of federal criminal law.
- Federal judges are nominated by the president and confirmed by the Senate, and they serve for life. The U.S. Supreme Court has complete discretion to control the nature and number of the cases it reviews, and it hears only a tiny fraction of the thousands of petitions that come before it. The chief justice orders the business of the U.S. Supreme Court.
- There are 11 circuit courts of appeals plus the D.C. Circuit and the Federal Circuit; they hear appeals from the federal district courts located within their circuits, as well as appeals from decisions of federal administrative agencies.
- The criminal justice process is engaged when one is arrested. Following that, the accused will then proceed through a series of steps; at some point, the prosecutor will prepare an information setting forth the charge against the defendant; some jurisdictions use a grand jury to bring formal charges rather than the prosecutor's doing so unilaterally.
- Discovery is the pretrial exchange of information between prosecution and defense to promote a fair adversarial contest between the two sides and help the truth come to light.
- The Sixth Amendment gives defendants the right to a trial by an impartial jury of their peers. The jury system is felt by many to be the most sacred aspect of our criminal justice system because common citizens sit as a forum to determine the truth and assess the punishment to be meted out.
- The Sixth Amendment guarantees the accused the right to a speedy and public trial. Although there are fixed, enforced time limits at the federal level, the Supreme Court has never defined a “speedy trial” with precise time frames at the state level. Rather, courts must use a test to determine whether the defendant's right to a speedy trial was violated.
- The courts are unveiling new technologies that it is hoped will provide more efficient and effective operations. These include paper on demand, digital recording, use of tablets and apps, annotation monitors, evidence cameras, and videoconferencing (including fully remote proceedings) as part of trials.

KEY TERMS

Adversarial system (p. 198)
 Arraignment (p. 212)
 Bail (p. 210)
 Booking (p. 209)
 Causation (p. 209)
 Circuit courts (p. 206)
 Court of last resort (p. 204)

Delay (trial) (p. 217)
 Discovery (p. 215)
 District courts (p. 205)
 Diversion program (p. 216)
 Dual-court system (p. 197)
 Eighth Amendment (p. 199)
 Federal court system (p. 197)

Grand jury (p. 211)	Pretrial motions/processes (p. 215)
Initial appearance (p. 209)	Speedy Trial Act of 1974 (p. 217)
Intermediate court of appeals (p. 204)	Standing (p. 208)
Jurisdiction (p. 201)	State court system (p. 197)
Plea negotiation (or bargaining) (p. 212)	Trial process (p. 217)
Policy-making (p. 198)	U.S. Supreme Court (p. 206)
Preliminary hearing (p. 211)	

REVIEW QUESTIONS

1. How is the adversarial system of justice related to the truth-seeking function of the courts?
2. How do the courts influence public policy-making?
3. What are the types of, and reasons for, courts having specific types of jurisdiction?
4. What are the roles of the state court systems?
5. What is the structure and function of the trial courts of general and limited jurisdiction?
6. How does the U.S. Supreme Court decide to hear an appeal, and approximately how many cases does the Court hear per term?
7. What are some of the pretrial activities that occur?
8. Why does our jury system exist, and how is a jury formed?
9. What is meant by a right to a “speedy” trial? What are the ramifications of a defendant’s being denied this right?
10. What are the major points of the trial process, from opening statements through appeal?

LEARN BY DOING

1. Your local League of Women Voters is establishing a new study group to better understand the court system as it relates to political affairs. You are asked to explain the dual-court (federal and state) system. You opt to use *Kibbe v. Henderson* as a good—and rare—example of a convicted offender’s flow through both systems. Prepare your presentation.
2. Some countries do not subscribe to the adversarial process as part of their court system, believing that it is too combative, slow, and cumbersome and can lead to a “win at all cost” mentality among the lawyers. Rather, they use a nonadversarial or inquisitorial system, in which the court or a part of the court is actively involved in determining the facts of the case (as opposed to the court’s being primarily an impartial referee, as in the adversarial system). Your instructor asks you to participate in a pro-con group project concerning the adversarial process. Choose a side and make your defense.
3. Your criminal justice professor has assigned the class to debate the pros and cons of plea negotiation. What do you believe will be the prominent arguments presented by each side?
4. Assume you are a court administrator, and your chief judge has tasked you to “bring the courtrooms into the new decade” by making recommendations concerning technologies that should be acquired. Using information and descriptions of the technologies presented in this chapter, select and prioritize which new technologies you would recommend be obtained, and why. What special considerations should be given to ensure the proper use of these technologies?



©iStockphoto.com/gorodenkoff

10

THE BENCH AND THE BAR

Those Who Judge, Prosecute, and Defend

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 10.1** Explain the five methods of judicial selection and why the subject of judicial selection has come under scrutiny.
- 10.2** List some of the benefits, training, and challenges of judges.
- 10.3** Describe why courtroom civility is important, as well as the meaning of “good judging.”
- 10.4** Relate the major duties of prosecutors and defense attorneys, including their roles in plea negotiations.
- 10.5** List the six main actors who participate in the courtroom work group and describe the courtroom subculture.
- 10.6** Discuss the various defenses that defendants may use in criminal cases to reduce or eliminate their criminal liability.

ASSESS YOUR AWARENESS

Test your knowledge of the duties of judges, prosecutors, and defense attorneys by responding to the following seven true–false items; check your answers after reading this chapter.

- 1.** Studies indicate there is no difference in terms of how judges are selected; in all states, they are simply elected.
- 2.** In recent years, people involved with courtroom matters have become much less friendly and less well-behaved.
- 3.** The prosecutor may be fairly said to be the single most powerful person in the American criminal justice system.
- 4.** A criminal defense attorney’s primary role is to help the defendant escape punishment, even if the defendant is indeed guilty as charged.
- 5.** A prosecutor’s primary duty is not to convict, but to see that justice is done.
- 6.** One’s transition from public or private attorney to the role of judge can involve several psychological problems and issues.
- 7.** An individual can use one of only two defenses against being charged with a crime: “I didn’t know it was a crime” or “I was too intoxicated to know what I was doing.”

Answers can be found on page 401.

Judges exercise high levels of discretion and hold extraordinary powers. They impact the trajectory of millions of lives each year. Judges decide a wide range of outcomes, including who should be subject to fines, loss of liberties, incarceration, social services, the conditions of divorce and child custody—all of which represent significant consequences for those who stand before the bench. Unquestionably, judicial misconduct represents a serious threat to public confidence in those we trust to carry out justice.

Reuters recently conducted a national review of judicial misconduct between 2008 and 2019, identifying and reviewing 5,122 cases in which accusations of judicial misconduct led to resignation, retirement, or discipline.¹ They found that 9 of 10 remained on the bench, even after facing discipline. The reporters highlighted specific cases impacting thousands of defendants.

- In Pennsylvania, two judges were convicted of receiving kickbacks in exchange for sentencing juveniles to a for-profit detention facility—impacting at least 2,251 juveniles who later had their records expunged.
- In Ohio, a judge has been accused of incompetence after being hospitalized for alcoholism—a review is underway of the judge’s 2,707 cases.
- In Alabama, a judge failed to perform their judicial functions and unnecessarily delayed cases involving time-sensitive family matters—a judicial commission found the judge failed to maintain professional competence, and the delays manifested “a callous indifference or lack of comprehension” to children’s well-being.

Other judges were found engaging in a wide variety of unethical behaviors, including berating domestic violence victims, texting obscene videos to court clerks, having sex in courthouse chambers, and participating in drunken fights at professional conferences. In Texas, a judge interrupted jury deliberations to tell jurors that God told him the sex trafficking defendant in the case was innocent.

The impact of a single judicial decision can have far-reaching consequences. Marquita Johnson was sentenced to more than a year in jail for failing to pay traffic fines. While a judicial commission later determined the sentence violated the state’s judicial code of conduct, Johnson’s two daughters were placed in foster care during her incarceration. One was physically abused, and the other endured sexual abuse. Johnson said the judge “took away my life and didn’t care how my children suffered. My girls will never be the same.”²

We often think of judges as all-powerful players in the criminal justice system. As you read this chapter, think about the role of each of the courtroom actors. How much power and discretion should each of the actors have? What ethical standards should these actors be held to, both in the courtroom and in their personal lives? This chapter goes beyond the general nature of courts and judges, focusing more on judges and other key personnel who are involved in the courts and their operation.

INTRODUCTION

It is a part of our human nature that we hate losing. Therefore, even though in theory attorneys in a criminal courtroom are engaged in a truth-seeking process, make no mistake: They are *competing* from beginning to end—trying to persuade the judge to include or exclude evidence or witnesses, to persuade the judge or jury of the guilt or innocence of the defendant, to sway the judge or jury that the convicted person should or should not be severely punished, and so on. This adversarial legal process is what drives our criminal justice system. Indeed, renowned defense attorney Percy Foreman is said to have remarked, “The best defense in a murder case is that the deceased should have been killed.”³ In a murder case where a woman was charged with shooting her husband, Foreman so slandered the victim “the jury was ready to dig up the deceased and shoot him all over again.”⁴ As will be seen in this chapter, the challenges (and criticisms) facing today’s judges are several. They must successfully serve many masters and occupy many roles. As criminologist Abraham Blumberg noted,

The “grand tradition” judge, the aloof brooding charismatic figure in the Old Testament tradition, is hardly a real figure. The reality is the working judge who must be politician, administrator, bureaucrat, and lawyer to cope with a crushing calendar of cases.⁵

The chapter opens by considering how judges ascend to the bench. This once-simple task has come under intense scrutiny—particularly in relation to the partisan election of judges, for which they must often solicit campaign contributions. Then we discuss the benefits and problems that occur when one becomes a judge; following that is an examination of the need for courtroom civility and a look at judicial misconduct. The roles and strategies of two other very important court figures—prosecutors and defense attorneys—are also reviewed.

THOSE WHO WOULD BE JUDGES: SELECTION METHODS AND ISSUES

The way state and local court judges assume the bench matters—and it differs widely from state to state. The method used to select judges is important for at least four reasons: The type of judicial selection system affects judges' experience level; it determines the ability of qualified but less politically connected individuals to serve; it affects the gender and racial diversity of the judiciary; and it affects the public's perception of judicial impartiality and independence.⁶ Across the United States, at least five methods of **judicial selection** are used, but no two states use exactly the same selection method. In many states, more than one method of selection is used—for judges at different levels of the court system and even among judges serving at the same level. And when the same method is used, there are still variations in how the process works in practice.

Methods of Selection in State Courts

All federal judges are nominated by the president and confirmed by the Senate, and they serve for life (unless they resign or are impeached). When a vacancy (due to death, retirement, or resignation of a judge)⁷ occurs at the state level, however, candidates often face an election as part of their selection process. This becomes particularly important given that 97% of the cases heard in the United States are handled by state judges. Furthermore, every year millions of Americans find themselves in state courts, whether called for jury service, to address a minor traffic offense, as a crime victim, or in a small-claims case.⁸

The following five methods of selection used in state courts⁹ are also depicted in Figure 10.1:

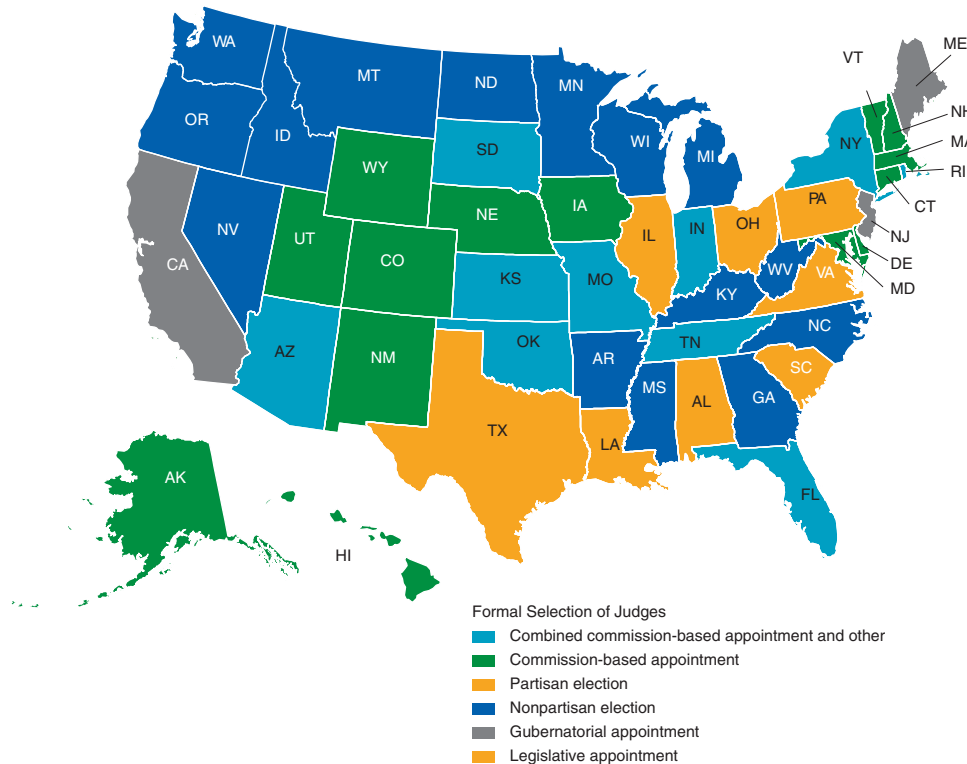
- *Commission-based appointment* (also known as **merit selection**): a means of selecting judges whereby names of interested candidates are considered by a committee and recommendations are then made to the governor, who then makes the appointment; known also as the Missouri Plan. Judicial applicants are evaluated by a nominating commission, which then sends the names of the best-qualified candidates to the governor, who appoints one of those nominees. In most commission-based appointment systems, judges run unopposed in periodic retention elections, where voters are asked whether the judge should remain on the bench.
- *Partisan election*: In a partisan election, multiple candidates may seek the same judicial position. Voters cast ballots for judicial candidates as they do for other public officials, and candidates run with the official endorsement of a political party. The candidate's party affiliation is listed on the ballot.
- *Nonpartisan election*: In a nonpartisan election, a judicial candidate's party affiliation, if any, is not designated on the ballot.
- *Gubernatorial appointment*: A judge is appointed by the governor (without a judicial nominating commission). The appointment may require confirmation by the legislature or an executive council.
- *Legislative appointment/election*: This is the process by which judges are nominated and appointed or elected by legislative vote only.

Debating Judges and Politics

"They're awful. I hate them." Thus spoke former U.S. Supreme Court justice Sandra Day O'Connor (the first female appointed to the U.S. Supreme Court) concerning her views of judicial elections at an American Bar Association summit.¹⁰ O'Connor added that the public is growing increasingly skeptical of elected judges in particular. At risk, O'Connor said, is the public perception that judges are "just politicians in robes."¹¹ O'Connor also said that "if I could wave a magic wand, I would wave it to secure some kind of merit selection of judges across the country."¹² While surveys of U.S. voters find that

FIGURE 10.1 ■ Initial Selection of State Judges (Trial Courts of General Jurisdiction)

*In these states, appellate court judges are chosen through commission-based appointment, and trial court judges are chosen through commission-based appointment or in partisan or nonpartisan elections.



Source: Reprinted with permission from Institute for the Advancement of the American Legal System and American Judicature Society.

public trust and confidence in state courts has held steady around 70%, this varies considerably across racial and ethnic groups, with “only 32 percent of surveyed Black Americans believe state courts provide equal justice to all.”¹³ Favorable perceptions of the U.S. Supreme Court have also sharply declined over the past few years.¹⁴

Our courts make decisions every day that affect nearly every aspect of our lives. Therefore, to a large extent the quality of justice Americans receive depends on the quality of the judges who dispense it. Instances of judicial misconduct (also discussed later in this chapter) have fueled debate over how America chooses its judges. Consider this: Mike Maggio, appointed by the state governor, was removed from office while serving as the Division 2 circuit judge of the Twentieth Circuit of Arkansas. In 2014, the Arkansas Supreme Court ordered his immediate removal after he made posts on a Louisiana State University message board about a confidential adoption and wrote comments considered sexist, racist, obscene, and homophobic.¹⁵

OT ballers just gamble like Arabs, drink like Indians, and do the humpty-hump like rabbits.

Women look at 2 bulges on a man, one in the front of the pants or second one in the back pocket. Whichever one is bigger they can do without the other.

I offered to be the baby daddy. . . . Did she get herself a black baby? Yep.

Judicial integrity outside and within the courtroom is essential. Failure to perform ethical or required judicial duties damages public trust and confidence in the legal system. In March 2009, the U.S. Supreme Court considered a case concerning a newly elected West Virginia Supreme Court of Appeals justice, Brent Benjamin, who voted on a mining company dispute; the mining company

contributed \$3 million in an election campaign to help Benjamin get elected. Instead of removing himself from the vote (known in the courts as *recusal*), Benjamin instead possibly cast the deciding vote in the 3–2 case—in favor of the mining company. There was no law in West Virginia saying a judge can’t hear a case involving someone who financed their campaign. During oral arguments in the case, former justice David Souter said, “The system . . . is not working well.”¹⁶ The U.S. Supreme Court ruled in June 2009 that Benjamin’s failure to recuse himself violated the Fourteenth Amendment’s due process clause.¹⁷

Several states are now evaluating their judicial selection systems with a view to altering their current processes. And by ruling in the West Virginia case, the Supreme Court certainly put a spotlight on this issue—one that has already been settled in about 2 dozen states by eliminating political fundraising by their judicial candidates using various merit selection systems.¹⁸

YOU BE THE . . . JUDGE

In 1984, 18-year-old Terrance Williams was convicted of murdering 56-year-old Amos Norwood in Philadelphia. The trial prosecutor sought the death penalty in this case, and upon conviction, Williams was indeed sentenced to death.

In 2012, Williams filed an appeal, his attorneys claiming that the trial prosecutor had engaged in misconduct by obtaining false testimony and suppressing exculpatory evidence (i.e., evidence favorable to the defendant). The appeals court found that the trial prosecutor committed these violations and stayed Williams’s execution, while also ordering a new sentencing hearing. However, on further appeal the Pennsylvania Supreme Court reinstated Williams’s death sentence.

In 2015, the U.S. Supreme Court agreed to review the state supreme court’s ruling. At issue was the fact that the chief justice of Pennsylvania Supreme Court was former district attorney Ronald Castille, the person who earlier in his career had approved the trial prosecutor’s request to seek the death penalty for Williams in the first place. Although Williams had filed a motion asking Chief Justice Castille to recuse himself (to avoid a conflict of interest), Castille denied the motion and voted in this case.

1. Under what circumstances should judges recuse themselves from a case?
2. Did Castille act inappropriately when he denied Williams’s motion for recusal?

The U.S. Supreme Court’s ruling in this case is provided in the Notes section at the end of the book.¹⁹

“Investing” in Judges?

Adding fuel to the fire over judicial selection is the amount of money now being spent to fund judges’ elections. Expenditures on state supreme court elections has skyrocketed since the 1990s. For example, whereas 7 states had at least one sitting justice involved in a race costing \$1 million or more during their tenure in 1999, this number jumped to more than 20 states by the start of 2017.²⁰ Furthermore, special-interest groups have ramped up their efforts to influence the composition of state courts, making contributions to candidates, funding television ads, and pressuring candidates to speak publicly about their political views. In state supreme court elections in 2015 and 2016, special-interest group spending represented 40% of the total dollars spent in such races.²¹ Some states are now considering legislation to curb election spending, including eliminating the potential to receive funding from “dark money sources” (i.e., nonprofit organization donations where the source of the money is not reported or known) and putting caps on individual campaign contributions.²²



Judges are elected in many U.S. jurisdictions, but their campaigns and the money used to fund them are under increasing scrutiny amid questions of how judges can possibly remain objective and resist influence on the bench.

Jill Ann Spaulding/Moment Mobile/Getty Images

JUDGES' BENEFITS, TRAINING, AND CHALLENGES

Judges enjoy several distinct benefits of office, including life terms for federal positions in some states. Ascending to the bench can be the capstone of a successful legal career for a lawyer, even though a judge's salary can be less than that of a lawyer in private practice. Judges warrant a high degree of respect and prestige as well; from arrest to final disposition, the accused face judges at every juncture involving important decisions about their future: bail, pretrial motions, evidence presentation, trial, and punishment.

Although judges appear to be the primary decision-makers in the courts, such is not always the case. Judges often accept recommendations from others who are more familiar with the case—for example, bail recommendations from prosecutors, plea negotiations struck by prosecuting and defense counsels, and sentence recommendations from probation officers. Judges frequently accept such input in the kind of informal courtroom network that exists. Although judges run the court, if they deviate from the consensus of the courtroom work group, they may be sanctioned: Attorneys can make court dockets go awry by requesting continuances or by not having witnesses appear on time.

Newly elected judges are not simply “thrown to the wolves” and expected to immediately begin to conduct trials, listen to arguments, understand rules of evidence, render verdicts and sentences, and possibly write opinions, without the benefit of training or education. Many states mandate judicial education for new judges, sometimes even prior to assuming the role, as well as mandatory in-service or continuing education thereafter.

Other challenges can await a new jurist-elect or appointee. Judges who are new to the bench commonly face three general problems:

- *Mastering the breadth of law they must know and apply.* New judges would be wise, at least early in their careers, to depend on other court staff, lawyers who appear before them, and experienced judges for invaluable information on procedural and substantive aspects of the

law and local court procedures. Through informal discussions and formal meetings, judges learn how to deal with common problems. Judicial training schools and seminars have also been developed to ease the transition into the judiciary.

- *Administering the court and the docket while supervising court staff.* One of the most frustrating aspects of being a presiding judge is the heavy caseload and corresponding administrative problems. Instead of having time to reflect on challenging legal questions or to consider the proper sentence for a convicted felon, trial judges must move cases. They can seldom act like a judge in the “grand tradition.”²³ Judges are required to be competent administrators, a fact of judicial life that comes as a surprise to many new judges. One survey of 30 federal judges found that three fourths had major administrative difficulties on first assuming the bench, while half complained of heavy caseloads. One judge maintained that it takes about 4 years to “get a full feel of a docket.”²⁴
- *Coping with the psychological discomfort that accompanies the new position.* Most trial judges experience psychological discomfort on assuming the bench. Three fourths of new federal judges acknowledged having psychological problems in at least one of five areas: maintaining a judicial bearing both on and off the bench, dealing with the loneliness of the judicial office, sentencing criminals, forgetting the adversary role, and handling local pressure. One judge remembers his first day in court: “I’ll never forget going into my courtroom for the first time with the robes and all, and the crier tells everyone to rise. You sit down and realize that it’s all different, that everyone is looking at you and you’re supposed to do something.”²⁵ Like police officers and probation and parole workers, judges complain that they “can’t go to the places you used to. You always have to be careful about what you talk about. When you go to a party, you have to be careful not to drink too much so you won’t make a fool of yourself.”²⁶ And the position can be a lonely one: After you become a . . . judge some people tend to avoid you. For instance, you lose all your lawyer friends and generally have to begin to make new friends. I guess the lawyers are afraid that they will someday have a case before you, and it would be awkward for them if they were on too close terms with you.²⁷

Judges frequently describe sentencing criminals as the most difficult aspect of their job: “This is the hardest part of being a judge. You see so many pathetic people, and you’re never sure of what is a right or a fair sentence.”²⁸

Going Global 10.1

Studying Law

In the United States, prospective law school students must first (in most cases) earn an undergraduate degree at an accredited college or university. Law schools use a competitive admission process, so potential students are judged based on their undergraduate grade point average, recommendation letters, personal statement, and Law School Admissions Test (LSAT) score. The LSAT was designed to measure student skills thought to be needed to successfully complete law school, including reading comprehension, analytical reasoning, and logical reasoning.

Other countries manage law school admissions very differently. One of the biggest differences is that many European countries do not require an undergraduate degree for law school admission. For example, German students are among those who do not need to complete an undergraduate degree before studying law. German law school admissions are based on high school grades—personal statements, recommendations, and additional tests are generally not required. Further, most German law students do not pay for their education, while U.S. law students usually pay more than \$100,000 for their 3-year degree (without scholarships). The German system may sound enticing, but in reality, it typically takes 7 years or more to complete a law degree in Germany. Germany uses a two-step system. First, students must obtain a university law degree

(*Erste Juristische Prüfung*). Second, the candidate must complete a several-stage mandatory clerkship to learn necessary practical skills. After the clerkship, the candidate must pass a set of written and oral examinations (*Zweites Staatsexamen*).

Sources: “How to Qualify as a Lawyer in Germany,” International Bar Association, https://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Germany.asp; to learn more about law schools throughout the world, visit the International Bar Association and obtain a student membership at www.ibanet.org.

THE ART OF JUDGING, COURTROOM CIVILITY, AND JUDICIAL MISCONDUCT

To fully understand judges’ role in the criminal justice system, we must consider some of the less obvious facets of their work on and off the bench: the art and craft of judging, maintaining civility among the many courtroom players, and the critical issue of judicial misconduct.

“Good Judging”

What traits make for “good judging”? Obviously, judges should treat each case and all parties before them in court with absolute impartiality and dignity while providing leadership for court operations. But judging requires more than just those activities and roles. For example, a retired jurist with 20 years on the Wisconsin Supreme Court stated that the following qualities define the art and craft of judging:

- Judges are keenly aware that they occupy a special place in a democratic society. They exercise their power in the most undemocratic of institutions with great restraint.
- They are aware of the necessity for intellectual humility—an awareness that what we think we know might well be incorrect.
- They do not allow the law to become their entire life; they get out of the courtroom, mingle with the public, and remain knowledgeable of current events.²⁹
- Other writers believe that judges should remember that the robe does not confer omniscience or omnipotence; as one trial attorney put it, “Your name is now ‘Your Honor,’ but you are still the same person you used to be, warts and all.”³⁰

Courtroom Civility

As if it weren’t difficult enough to strive for and maintain humility, civility, and balance in their personal lives, judges must also enforce courtroom civility. Many persons have observed that we are becoming an increasingly uncivil society; the courts are not immune to acts involving misconduct. Research finds that judges are reporting declining levels of civility in their courtrooms.³¹

Personal character attacks by lawyers, directed at judges, attorneys, interested parties, clerks, jurors, and witnesses, both inside and outside the courtroom, in criminal and civil actions have increased at an alarming rate.³² For example, an attorney stated that opposing and other attorneys were “a bunch of starving slobs,” “incompetents,” and “stooges.”³³ Such behavior clearly does not enhance the dignity or appearance of justice and propriety that is so important to the courts’ public image and function. The Model Code of Judicial Conduct addresses these kinds of behaviors; Canon 3B(4) requires judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity and requires judges to demand “similar conduct of lawyers, and of staff, court officials, and others subject to the judge’s direction and control.”³⁴ At a minimum, judges need to attempt to prevent such behavior and discipline those committing offenses when it occurs. Among the means that judges have at their disposal to control errant counsel are attorney disqualifications, new trials, and reporting of attorneys to disciplinary boards.³⁵



Judges are responsible for regulating the behaviors of all courtroom participants and observers, including attorneys, defendants, witnesses, court personnel, jury members, and members of the public.

iStockphoto.com/RichLegg

Judicial Misconduct

What types of **judicial misconduct** must the judiciary confront? Sometimes medications may affect a judge's cognitive process or emotional temperament, causing them to treat parties, witnesses, jurors, lawyers, and staff poorly. Some stay on the bench too long; such judges will ideally have colleagues who can approach them, suggest retirement, and explain why this would be to their benefit. And sometimes, according to one author, judicial arrogance (sometimes termed "black robe disease" or "robe-itis") is the primary problem. This is seen when judges "do not know when to close their mouths, do not treat people with dignity and compassion, do not arrive on time, or do not issue timely decisions."³⁶

Some bar associations or judicial circuits perform an anonymous survey of a sample of local attorneys who have recently argued a case before a particular judge and then share the results with the judge. Sometimes these surveys are popularity contests, but a pattern of negative responses can have a sobering effect on the judge and encourage them to correct bad habits. Many judges will be reluctant to acknowledge they have such problems as those described here. In such cases, the chief judge may have to scold or correct a subordinate judge. Although difficult, it may be imperative to do so to maintain good relations with bar associations, individual lawyers, and the public. A single judge's blunders and behaviors can affect the reputation of the entire judiciary, as well as the workloads of the other judges in their judicial district. Chief judges must therefore step forward to address such problems formally or informally.³⁷

The Committee on Codes of Conduct of the Judicial Conference of the United States provides guidance to U.S. federal judges to help promote ethical behavior. In a recent attempt to curb judicial misconduct, the committee condemned the use of a wide variety of common social media behaviors. For example, they argue that judges must carefully word every personal social media comment, post, or blog to avoid any appearance of impropriety. They caution against using social media to engage in improper communications with lawyers or others (e.g., commenting on or "liking" posts that support particular people or causes); participating in activities that might adversely impact perceptions of impartiality (e.g., maintaining a blog that promotes particular political positions); using court email accounts for personal social activities (e.g., forwarding chain emails); or engaging in social media activities that could reveal any confidential, sensitive, or nonpublic information obtained through the court.³⁸ In 2017, an American Bar Association publication addressed similar ethical concerns associated

with lawyers and judges using social media sites such as Facebook, Twitter, and YouTube.³⁹ Like the rest of the public, judges can have social media accounts. With these accounts, judges face added responsibility. Judges, and other justice system personnel, must be prepared for intense scrutiny of the information shared through this medium and accept weighty restrictions not applicable to other users.⁴⁰

THE ATTORNEYS

Next, we look at the roles and strategies of attorneys who serve on both sides of the courtroom aisle—as prosecutors and defense attorneys.

“Gatekeeper” of the Justice System: Prosecutor

The prosecutor may be fairly said to be the single-most powerful person in the American criminal justice system—and to have tremendous discretion in what they do. As described by the Southern Poverty Law Center, “Prosecutorial discretion is a necessary and important part of our system of justice—it allocates sparse prosecutorial resources, provides the basis for plea-bargaining and allows for leniency and mercy in a criminal justice system that is frequently harsh and impersonal. They literally have unchecked power to decide who will stand trial for crimes.”⁴¹ Indeed, prosecutors have the authority and power to make all of the following decisions, at their sole discretion, all of which affect criminal defendants and the criminal justice system in general:

- The decision to charge
- Types of charges
- Whether to recommend granting or denying bail
- Plea agreements—whether to entertain such agreements and, if so, the terms
- Sentencing recommendations

Prosecutors represent the people, and the victims in particular. They investigate crimes—often out in the field, having been called to the scene of a particularly heinous crime by the police. Still, the primary role of the **prosecuting attorney**, as set forth by the U.S. Supreme Court, is “not that he shall win a case, but that justice shall be done.”⁴²

Once the police have completed a preliminary investigation, the prosecutor evaluates the arrest report and other documents to determine whether there is sufficient evidence to bring charges. Prosecutors also can rebuke officers who have not done their work properly—perhaps failing to have the requisite probable cause prior to making a search or an arrest—and can quash the arrest report. They have contact with the person suspected of the crime, the victim and witnesses, and the police. For them, the overarching question is, “Can I prove that a defendant committed a particular criminal act beyond a reasonable doubt?” If so, the prosecutor’s office files charges and handles the case through pretrial negotiations (if any) and ultimately takes the case to trial. Other determining factors concerning how to handle a case are as follows:

- The type of crime charged (personal or property crime)
- The prior criminal record of the person accused
- The number of counts in the complaint (the more counts there are, the stiffer the sentence sought)
- Whether there are aggravating or mitigating circumstances in the case
- The victim’s attitude—what they want done with the case (this is particularly important in cases of violent crimes)

Good prosecutors will also try to establish rapport with the victim prior to trial, to personalize the justice system. If possible, the prosecutor or a victim advocate might take the victim to the court and show them the courtroom and witness stand and where the person accused of a crime will be seated, explaining the process along the way.

YOU BE THE . . . VICTIM ADVOCATE

A relatively new member of the courtroom work group is the victim advocate. In our adversarial system of justice, the prosecutor represents the people of their state or county and seeks justice for them and the victim, but the prosecutor is not the victim's personal representative. Despite best efforts, victims can often feel lost in the dizzying process that is a criminal case. Victim advocates seek to remedy that problem, providing victims with information about the criminal justice process, resources for recovery and counseling (especially for victims of violent crimes), legal rights, and a host of other services to help the victim navigate the uncertainties of postvictimization life.

Not surprisingly, these advocates (both paid and volunteer) work in a variety of places along the criminal justice spectrum, often being called to crime scenes to comfort victims immediately after a crime. They also work at police stations and hospitals and are often in or around the court to accompany victims who have been asked to testify, to work with prosecutors and defense attorneys as they negotiate plea deals or case outcomes, and to monitor the court process so they can better inform the victim about what to expect. They also accompany victims' families to the morgue to claim personal effects.

If you were responsible for recruiting or hiring victim rights advocates in your jurisdiction:

1. What type of educational degree (e.g., field of study) and background experience would you want your candidates to possess?
2. How would you address burnout and psychological trauma that victim advocates (like many other first responders who assist victims) are likely to face?

To learn more about the role of victim advocates, visit the National Center for Victims of Crime at <https://victimsofcrime.org>.

Prosecutorial Immunity and Misconduct

Not only do prosecutors have nearly unfettered discretion and power, but they are also immune from prosecution for actions taken in their official capacity. In other words, defendants cannot sue prosecutors for civil damages for how they handled a case.⁴³ This “civil immunity” is unique in our system of justice. In fact, it's unique in the professional realm in general. Doctors, other lawyers, and most professionals (except judges) are subject to civil prosecution if they fail to maintain standards of conduct and performance that apply to their field. Probably the most dramatic contrasting example is that of police officers, who are not granted such immunity and yet are tasked with making a multitude of professional decisions in the field—many of them in a split second and in dynamic and dangerous situations.

Some scholars and observers believe prosecutorial immunity goes too far and unfairly insulates the most powerful player in the criminal justice system.⁴⁴ Proponents of this long-standing immunity counter that prosecutors, in serving the people and in seeking to do justice on behalf of communities, cannot be looking over their shoulders or second-guessing their decisions because they fear civil suits. As the U.S. Supreme Court has put it, prosecutorial immunity represents a “balance of evils” and that it is better “to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.”⁴⁵

“Guiding Hand of Counsel”: Defense Attorney

In many countries, a person mired in some stage of a legal proceeding might find themselves standing alone in the courtroom, overwhelmed by fear and befuddled by the activities swirling around them. Not so in the United States, where the fundamental principles of liberty and justice require that all Americans, even the poorest among us, will be given the “guiding hand of counsel” at all critical stages of a criminal proceeding.

Duties and Strategies

Many people believe the Sixth Amendment's provision for effective counsel is the most important right we enjoy in a democracy. The law is complicated, and by requiring the state to prove its case and helping defendants understand their options in the criminal justice system, **defense attorneys** can try to ensure that the state does not commit innocent people to jail or prison. Furthermore, defendants have the right to counsel during all "critical stages" of the proceedings—those in which rights could be lost—which include interrogation, jury selection, arraignment, trial, sentencing, and first appeal of conviction (but not the initial appearance, where the judge simply informs the defendant of their charges and rights), as well as pretrial testing of fingerprints, blood samples, clothing, hair, and so on.⁴⁶

What does "ineffective" counsel mean in practice? Basically, it means the attorney was deficient in their performance, and in being so, the resulting prejudice to the defendant was so serious as to bring the outcome of the proceeding into question.⁴⁷ This standard, often referred to as the Strickland test, was initially established by the U.S. Supreme Court in *Strickland v. Washington* (1984).⁴⁸ Examples would include one's failures to investigate an alibi defense, investigate prosecution witnesses, obtain experts to challenge the prosecution's physical evidence, or even attend or stay awake for hearings.⁴⁹ The burden of proving ineffective counsel is high and is on the defendant to show that "a reasonable probability" exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different.⁵⁰ But it is possible to do so: In one Texas case, a defense attorney claimed he did not believe he needed to go into sleazy bars to look for witnesses. The appeals court essentially informed him that's precisely what he would do, if doing so was required to locate witnesses for the defendant, persons to confirm the defendant's alibi, and so on.⁵¹

When someone is charged with a crime, their defense lawyer, either hired or court-appointed, should do the following:

- Explain the offense the accused is charged with, including the possible punishments and probation options.
- Advise the accused of their rights, ensure those rights are upheld, and inform the accused of what to expect during the different stages of the criminal process.
- Investigate the facts of the case.
- Explain what is likely to happen if the case goes to trial.
- If beneficial for the accused, attempt to negotiate a plea bargain with the prosecutor (more than 97% of federal criminal convictions and more than 94% of state criminal convictions come from negotiated pleas of guilty, which must be approved by the judge; therefore, just a small fraction of criminal cases go to trial)⁵²—this can involve arranging for reduced charges, a shorter sentence, sentences for different crimes to be served consecutively instead of concurrently, probation or a disposition that avoids certain imprisonment, and/or other consideration, in exchange for entering a plea of guilty.
- If the case goes to trial, cross-examine government witnesses, object to improper questions and evidence, and present applicable legal defenses,⁵³ as described later in this chapter.

Other defense strategies might include the following:

- Trying to make the victim appear to be the aggressor, or someone who "deserved" what happened to them (the general rule is that the defense attorney wants to try to overlook the victim's story, while the victim wishes to punish the defendant and will also try to engender sympathy; particularly if the victim appears to have precipitated or participated in the crime, the defense will attack their faults at trial, within legal bounds)
- Coming up with ways to compensate the victim (e.g., determining whether they will accept restitution or be satisfied if the defendant attends counseling)
- Getting continuances (which might mean that key witnesses move away, emotions and local publicity surrounding the crime diminish, and so forth)



Priscilla Prendez speaks with public defender Joe Cress during her first court appearance on September 1, 2017, in Sacramento County Superior Court. Prendez faced charges for vehicle theft and felony evasion stemming from a car chase that led to the fatal shooting of a Sacramento sheriff's deputy.

AP Photo/Rich Pendroncelli

Indigent Services

In *Griffin v. Illinois* (1956), the U.S. Supreme Court observed that “there can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”⁵⁴ There are basically three systems for providing legal representation to persons who are indigent in criminal prosecutions: the public defender system, the assigned counsel system, and the contract system.⁵⁵

Public defenders, like prosecutors, are paid government employees—most found in larger jurisdictions—whose sole function is to represent defendants who are indigent. Public defenders perform many of the duties of prosecutors, described earlier in this chapter. They provide representation to people who not only are indigent but also may be illiterate, uneducated, and uncooperative, while managing a large caseload. Public defenders might also represent juveniles charged with acts of delinquency (offenses that would be a felony if committed by an adult) as well as children in child abuse and neglect cases.

The assigned counsel system uses private attorneys appointed on an as-needed basis by the court. A primary problem with assigned counsel is that the attorney may have little or no experience handling the criminal matter at hand; indeed, it may have been long ago that the assigned counsel studied subjects such as criminal law, criminal procedure, rules of evidence, and so on, and such attorneys may have limited knowledge about their state's criminal statutes.

The contract system is one whereby an attorney, a law firm, or a nonprofit organization contracts for a certain dollar amount—often after engaging in competitive bidding—with a unit of government to represent its defendants who are indigent. Advantages of this system can include reduced and predictable costs, streamlining of the counsel appointment process, and greater expertise of the attorneys. A major disadvantage is that obtaining legal counsel from the “lowest bidder” may result in inadequate or ineffective legal services—which may, of course, interfere with the defendant's Sixth Amendment right to effective counsel and be the basis for appealing a conviction.

As with many things in life, it is said about legal representation, “You get what you pay for.” Obviously, people with financial means to do so will typically “go to the marketplace” and hire the best-trained legal counsel they can afford to represent them for their criminal matter. At the opposite end of this continuum is the *pro se* defendant who chooses instead to represent themselves. In such cases, there is an old adage: He who represents himself at trial has a fool for a client.

COURTROOM WORK GROUP

Like police subculture, courtroom actors are also part of a subculture. The courtroom subculture is influenced heavily by the need to process large numbers of cases. Although our trial courts are designed to promote adversarial processes in which defense and prosecuting attorneys “battle” to win court cases, courtroom actors—including the prosecutor, defense attorney, and judge—must work together to keep cases moving as quickly as possible and prevent delays that could violate the accused’s Sixth Amendment right to a speedy trial. Accordingly, interactions between courtroom actors, who make up the **courtroom work group**,⁵⁶ are more likely to be cooperative than combative in nature.

In addition to the judge, prosecutor, and defense attorney, there are three other key courtroom work group participants: the court reporter, the clerk, and the bailiff. The court reporter attends legal proceedings, including trials and depositions (in which witnesses answer attorneys’ questions under oath prior to trial), to record what is said and create transcripts of the proceedings. According to the Bureau of Labor Statistics, the justice system employs over 21,000 court reporters.⁵⁷ The clerk of the court performs a wide array of functions. In essence, the clerk organizes and catalogs all the paperwork generated during a trial, including all exhibits introduced into evidence (e.g., photographs and transcripts). The clerk also manages the jury subpoena and selection processes and administers oaths to witnesses and jurors. The bailiff is a law enforcement officer who is responsible for maintaining order and safety in the courtroom and the judge’s chambers. Bailiffs assist with the movement of defendants and jury members in and out of the courtroom, and they remove any persons ordered out of the courtroom by the judge.

PRACTITIONER’S PERSPECTIVE

COURT ADMINISTRATOR



Name: Maxine Cortes

Position: Court Administrator

Location: Reno, Nevada

What are the primary duties and responsibilities of a practitioner in this position? As a court administrator, I am responsible for facilitating policies, procedures, and operational needs of the courts. I report directly to the judges. So in that capacity, I write grants, handle the budget, and am responsible for recruiting facilities, technology projects, and jury systems.

What are some challenges you face in this position? The biggest challenge is that you don’t really have control of your day. So every day, you have things that you need to do, meetings that you need

to attend. But at a moment's notice, whether it is a phone call, an email, somebody walking through the door, everything can change. Being able to pivot and be professional and positive and continue to handle any task or issue, being solution-oriented, flexible, and patient—I think that is the biggest challenge that I have every day.

What role does diversity play in this position? Diversity is huge. We serve diverse individuals from all walks of life, all socioeconomic backgrounds, all different ethnicities. The people we work with are also very diverse. Working in the court system, I'll sometimes see people come in, and it looks like they're going to the dentist—they really don't want to be there. To be able to maneuver and help them understand that not everyone thinks alike and sees the world through the same lens, and being able to take the opportunity with diversity to approach people in different manners that will help them maneuver through the court system—that is a major part of the role.

Do you see any common trends in this position? The trends in the court system in the last 10 years have been very exciting. Technology has played a huge role. We used to hire court reporters every day, but we do everything pretty much now through audio-video systems. In the future, I think we will see more technology playing a role in the courts, bringing an opportunity to the public to have that access to the system easily, whether it's through an iPad or a mobile phone or a PC at home.

What advice would you give to someone either wishing to study, or now studying, criminal justice and wanting to become a practitioner in this position? My advice for students who are looking for any career, whether it be the court system or anywhere else, is to shadow. Find someone who's willing to have them shadow for 1 to 2 weeks if they're amenable. Walk in their shoes, learn what they do. I think that is the best way to really determine if you want to spend your life in a career. I also think if you do choose a career in the court system, I highly recommend taking a few classes: leadership, conflict resolution, mediation, budgeting, and communication.

DEFENSES

As mentioned earlier in this chapter, defense attorneys present applicable legal defenses for defendants. In the U.S. system of justice, criminal defendants have the opportunity to defend their actions by asserting **affirmative defenses**, in which the defendant admits to the criminal conduct but offers their reasons for acting. Because the defendant asserts such defenses, they typically have the burden to prove them. These **defenses** fall into two categories: justifications and excuses. When using justification defenses, defendants argue they were justified in acting because, for example, they were defending themselves or others. A police officer who had to injure a fleeing felon could claim a justification defense. When using excuse defenses, defendants admit to the criminal act but claim they are not legally responsible—they are excused—because they are too young or are insane, for example.

Learning about defenses is another way to learn about the critically important element of mens rea. Most defenses are designed to negate or reduce criminal liability by showing that the accused did not act with the required criminal intent. The prosecution may be able to easily show that the criminal act—the *actus reus*—was committed (e.g., the killing, the assault, the breaking and entering), but the defense can then defeat the criminal charges by showing that the required mens rea simply was not present (killing in self-defense is not the same as killing intentionally because you are trying to save yourself, and breaking and entering to save yourself from freezing to death is not the same as burglarizing a home to steal things). As a result, examining these defenses helps us understand how mens rea operates in real cases.

Justification Defenses

We will first discuss the defenses used for justification.

Self-Defense

Self-defense is a justification defense rooted in legal doctrine that permits the use of force against others who pose a threat to one's person or interests. Under early common law of England, people had a "duty to retreat," also known as "retreat to the wall," prior to using force to defend themselves. In effect, a person could not respond to an attacker until they were cornered and had no other retreat option available. Today,

most state laws do not impose a duty to retreat and, in fact, provide in many situations that people may stand their ground (see discussion in Case Study 10.1). Under modern laws, one may use force, even deadly force, without first retreating to the wall against another person if they reasonably believe an attack against them is imminent, but defensive actions must be proportionate to the threatened harm and not unreasonable for the circumstances. One cannot respond to an attack with a small tree branch by using a shotgun.

Case Study 10.1

“Stand Your Ground” Laws

When George Zimmerman shot and killed an unarmed teen named Trayvon Martin in February 2012, a major controversy erupted, calling into question the entire criminal justice system and a controversial law that binds police and prosecutors. The “stand your ground” law essentially sets forth the common law “castle doctrine” that allows a homeowner to use deadly force against an intruder and then expands the right to defend beyond the home to any place someone has a right to be. Under the law, an accused killer may argue they acted in self-defense because they believed they were facing the threat of seriously bodily injury or death. The burden then shifts to the prosecutor, who must prove *beyond a reasonable doubt* (discussed earlier) that the person claiming self-defense was not facing such a threat of serious bodily harm or death and did not act in self-defense. The laws were originally intended to give citizens a presumption of innocence when defending themselves, while also generally banning police from detaining someone if they have evidence the shooter was attacked in a place he had a right to be. Prosecutors largely despise the law because of the aforementioned burden of proof, whereas defense attorneys have found it to be a means of defending people who claim they had a right to meet force with force. Stand your ground became law in Florida in 2005, and at least 25 states have since enacted some version.

Source: John Arnold, “The Law Heard Round the World,” *Time*, April 9, 2012, <http://www.time.com/time/magazine/article/0,9171,2110471,00.html>; also see “Trayvon Martin Case (George Zimmerman),” *New York Times*, July 19, 2012, http://topics.nytimes.com/top/reference/timestopics/people/m/trayvon_martin/index.html.



The fatal shooting of Trayvon Martin by George Zimmerman in Sanford, Florida, generated tremendous controversy because of its racial overtones and the state’s “stand your ground” law. In July 2013, Zimmerman, right, was acquitted of second-degree murder.

AP Photo/Orlando Sentinel, Jacob Langston, Pool

Necessity

If a criminal act is committed in the event of an emergency, and if the harm avoided outweighs the harm committed by the defendant, then a person might escape criminal liability by employing the necessity defense. For example, the necessity defense could be used by a person who trespassed on private property during a fire to save a child or unattended pet, someone who broke into a home to escape a life-threatening storm, or a person who drove at a reckless speed to transport a pregnant woman to the hospital. However, the necessity defense has not been successfully used by every defendant who has committed a crime with the intent to avoid a seemingly greater harm. For example, two people operated a needle-exchange program in Massachusetts to attempt to reduce the transmission of AIDS caused by contaminated hypodermic needles. They were charged with violating a state law prohibiting hypodermic needle distribution without a physician's prescription. Although the defendants were attempting to prevent harm, the court rejected the defendants' necessity defense on the grounds that the situation posed no clear and imminent danger.⁵⁸

Duress

The duress defense involves defendants' claims they committed the act only because they were not acting of their own free will. For example, the wife of a bank president calls her husband and informs him that someone has broken into their home and put a gun to her head, and if he does not bring money home immediately, she will be killed. The husband then removes the money from his bank to supply the ransom. The husband could argue that he acted under duress, only to save his wife. Other actual cases include a person who was forced by gangsters to commit certain criminal acts or be killed, a drug smuggler who argued that his family would have been killed if he did not do what he was told,⁵⁹ and a Texas prison inmate whose three cellmates planned an escape and threatened to slit his throat if he did not accompany them.⁶⁰ Again, the burden will be on the accused to convince the jury they committed the act under duress. For the duress defense to be successful, a jury must conclude the defendant:

1. was under an unlawful and immediate threat of serious bodily harm;
2. strongly believed the threat would be carried out;
3. had no reasonable, legal alternative; and
4. did not recklessly or negligently place himself in the situation.⁶¹

Excuse Defenses

Our discussion next moves to types of excuse defenses.

Age

The infancy defense excuses the acts of children ages 7 and under because they are too young to be criminally responsible for their actions—they are too young to form the requisite mens rea. Minors between ages 7 and 14 are presumed incapable of committing a crime, but prosecutors may challenge that assumption in certain cases. Minors over age 14 have no infancy defense, but those under 16 at the time of the crime are typically tried in juvenile court. Under some state statutes, however, serious felony cases are transferred automatically to adult court, or the prosecutor has the option to seek such a transfer if the juvenile is not a suitable candidate for the more lenient and protective philosophy and law of the juvenile court.

Entrapment

If the police induced a person to commit a crime they would otherwise not have attempted, the defendant can claim the defense of **entrapment**.⁶² But it is not always clear what constitutes entrapment. A state supreme court deemed that police officers posing as homeless persons with cash sticking out of

their pockets was entrapment because it could tempt even honest persons who were not otherwise predisposed to committing theft. But the U.S. Supreme Court did not find entrapment where undercover drug agents provided an essential chemical to defendants who were already planning to manufacture illegal drugs.⁶³ Nor is it entrapment when a drug agent sells drugs to a suspected drug dealer, who then sells it to government agents. The defense of entrapment will fail where the government has merely set the scene for people to commit a crime they are predisposed to commit anyway, such as when a police officer positions himself on the route of a known working prostitute and offers her money for sex when she comes by.

Intoxication

The intoxication defense is rooted in the concept of mens rea, and defendants must show they were operating under such “diminished capacity” that they could not know what they were doing and cannot be held responsible. The defense is not available in cases of voluntary intoxication (except in some cases of severe alcoholism where mens rea is impaired permanently) and is successful—albeit rarely—only in cases of involuntary intoxication (the spiked drink or slipped drug), where the intoxicant was ingested without awareness of its intoxicating nature or where the consumption was coerced. The burden on the defendant is high in these cases, and defense attorneys generally have a difficult time convincing juries that defendants should be excused (although diminished capacity can be useful for defense attorneys to seek reduced charges or punishment).

Double Jeopardy

The Fifth Amendment to the U.S. Constitution states that no person shall be “subject for the same offense to be twice put in jeopardy of life or limb,” prohibiting the government from prosecuting someone for the same offense more than once (**double jeopardy**). Other than some specific exceptions (a mistrial, a reversal on appeal, or a situation in which the crime violates laws of separate jurisdictions such as civilian/military or federal/state), the government has only one attempt to obtain a conviction. If a defendant is acquitted, the prosecution may not appeal that conviction or retry the defendant.

Mental Illness/Insanity

The insanity defense is perhaps the most misunderstood area of the criminal law. Ask anyone on the street, and most people will say the insanity defense is a way for criminals to “get off” by arguing they were “crazy” at the time of the crime. Some crimes by their very nature seem to indicate the perpetrator was indeed not thinking straight, and many people believe that those who commit especially gruesome crimes will, by default, plead insanity. These are just a few of the common misconceptions about this defense.

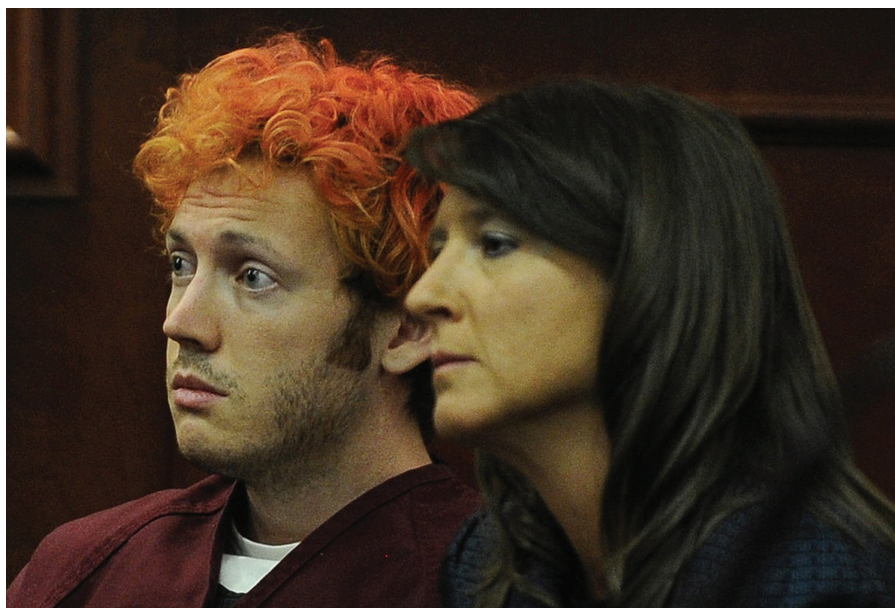
Several notorious trials have contributed to the confusion. Most notably, in 1981, John Hinckley Jr. attempted to assassinate President Ronald Reagan but was found not guilty by reason of insanity after he claimed he had done so to impress actress Jodie Foster and after psychiatrists testified at length about his childhood.⁶⁴ Then, in 1986, Steve Roth hired two men who slashed model Marla Hanson’s face with razors after Hanson rejected Roth’s sexual advances. Her injuries required more than 100 stitches. Roth’s insanity defense—based on the psychiatric effects of his short stature—failed, and all three men were convicted.⁶⁵ The 2008 movie *Milk* recalled the so-called Twinkie defense from the trial of Dan White, who in 1978 murdered Harvey Milk, a San Francisco gay rights activist and politician. Although the defense never even mentioned Twinkies during White’s trial, the media coined the term following psychiatric testimony that White had been depressed and consumed junk food and sugar-laden soft drinks—allegedly “blasting sugar through his arteries and driving him into a murderous frenzy.”⁶⁶ Despite these high-profile cases, the insanity defense is raised in less than 1% of felony cases and is successful in only a fraction of those.⁶⁷ The defense is really quite simple if you think of it as another way of examining the critical element of mens rea: Defendants must prove they have a recognized, diagnosable mental illness—a disease of the brain (e.g., schizophrenia, bipolar disorder, psychosis)—and that because of that mental illness, they cannot be held criminally responsible for their actions.

Case Study 10.2

James Holmes—The “Batman” Shooter

In July 2013, James Holmes went to the midnight viewing of the new Batman movie, *The Dark Knight Rises*. He had dyed his hair orange like the Joker character in the movie, but otherwise, Holmes seemed like any other Batman fan. While the movie got under way, Holmes slipped out an exit door, propped it open, went to his car and picked up SWAT gear, firearms, and ammunition, and then went back to the theater and opened fire, killing 12 and injuring 70. When law enforcement officers later caught Holmes outside the theater, he was quickly subdued and told officers he had booby-trapped his apartment with bombs and other weapons. There would seem to be no clearer case of someone acting with mens rea and premeditation, but questions quickly arose regarding Holmes’s psychiatric condition in the months leading up to the shooting. His attorneys ultimately entered a plea of not guilty by reason of insanity, and the world watched to see if this apparently evil, plotting killer would be convicted and sentenced to death. But the insanity defense in Colorado requires that the prosecution—not the defense—show that Holmes understood right from wrong (the M’Naghten Rule) and that he was not acting on impulses he could not control (the irresistible impulse test). The defense countered with evidence of Holmes’s mental illness to lay the foundation for a finding that he could not have fully understood or controlled what he was doing. In July 2015, a jury decided Holmes was not insane and convicted him of 24 counts of first-degree murder, 140 counts of attempted murder, and one explosives count. Despite the prosecution’s arguments that Holmes deserved to die for his crimes, the jury sentenced him to life in prison without parole.

Source: Colo. Rev. Stats §16–8; see also Denver Post Editorial Board, “Shining a Light on Insanity Plea,” *Denver Post*, June 9, 2013, http://www.denverpost.com/ci_23406862/shining-light-james-holmes-insanity-plea.



When James Holmes made his first appearance in court, accused of turning a Colorado movie theater into a shooting gallery, killing 12 and injuring 70, many people assumed he must be “crazy,” but the question of his guilt and mental state is much more complicated under the criminal law.

©RJ Sangosti/UPI/Newscom

State laws set forth the applicable test for legal insanity. Most states use the M’Naghten Rule, also known as the **right–wrong test**. Under this test, it must be “proved that, at the time of the committing of the act, the defendant suffered from a mental illness and because of that disease of the mind,

was laboring under such a defect of reason that he did not know the nature and quality of the act he was doing, or if he did know it, that he did not understand what he was doing was wrong” (see discussion in Case Study 10.2).⁶⁸ Another test is the “irresistible impulse test,” requiring a showing that the defendant, because of a mental illness, could not control their impulses or volition. Also known as “the policeman at your elbow” test, this standard for legal insanity requires a showing that the defendant would have committed the crime even if a police officer had been on the scene, literally at the accused’s elbow, thereby evidencing that the defendant had no impulse control.⁶⁹

Contrary to another popular misconception, a finding of legal insanity does not mean the defendant walks free. Instead, the defendant will be committed to a psychiatric facility. In some states, in reaction to the Hinckley verdict, the jury can reach a “guilty but mentally ill” verdict, allowing mentally ill defendants to be found guilty but to receive psychiatric treatment while incarcerated or to be placed in a mental hospital until well enough to be moved to a prison to serve their sentences.⁷⁰ After Hinckley’s trial, many states shifted the burden of proving insanity to the defense, requiring them to show either clear and convincing evidence or a preponderance of the evidence that the defendant was legally insane at the time of the crime. Consider the following notorious post-Hinckley cases in which the insanity defense failed:

- Jeffrey L. Dahmer, the serial killer who claimed that necrophilia drove him to murder and dismember/cannibalize 15 men and boys, was convicted in 1992.⁷¹
- David Berkowitz, known as the Son of Sam killer (he reported receiving messages from the devil through a neighbor’s dog, Sam), murdered six people in New York in the mid-1970s and was deemed fit to stand trial (despite a psychiatric report that found him paranoid and delusional).⁷²
- John Wayne Gacy, the Chicago-area so-called Killer Clown who murdered more than 30 youths, pleaded not guilty by reason of insanity but was convicted and executed in 1994.⁷³
- Eddie Ray Routh was sentenced to life in prison without parole for shooting and killing Chris Kyle (focus of the film *American Sniper*) and Chad Littlefield in 2013 at a Texas gun range, despite his attorneys’ attempts to introduce his PTSD diagnosis to support an insanity defense.⁷⁴

IN A NUTSHELL

- The debate over how we select our judges has escalated in the 21st century. Adding fuel to the fire over judicial selection is the amount of money now being spent by judges to fund their elections; across the nation, states use five basic methods of judicial selection. One of the more common methods is the merit plan (or “Missouri Plan”).
- Judges enjoy several distinct benefits of office, including life terms for federal positions and a high degree of respect and prestige. But problems can await new judges as well: mastering the breadth of law they must know and apply; administering the court and the docket; supervising court staff; and coping with the psychological discomfort and loneliness that accompany the new position.
- The prosecutor is probably the most powerful person in our criminal justice system, controlling the floodgates in determining whether to file charges (and these attorneys also have the ability to rebuke officers who fail to do their work properly). The prosecutor also interacts with the person suspected of the crime, the victim, and witnesses.
- Defense attorneys require the state to prove its case, help defendants understand their options in the criminal justice system, and attempt to ensure the entire slate of rights owed to the defendant is upheld. Like prosecutors, defense attorneys have several strategies at their disposal.

- The courtroom work group consists of individuals who play key roles during the trial process. The six main courtroom work group actors employed by the criminal justice system are the judge, prosecutor, defense attorney, court reporter, clerk, and bailiff.
- Our system of justice allows for persons charged with crimes to offer defenses for their behavior; one can argue their acts were justified (e.g., self-defense, necessity, duress); or the accused can admit wrongdoing but argue they are not deserving of blame due to circumstances surrounding the offense (e.g., age, entrapment, intoxication, mental illness).

KEY TERMS

Affirmative defense (p. 240)	Judicial misconduct (p. 234)
Courtroom work group (p. 239)	Judicial selection (methods of) (p. 228)
Defense (p. 240)	Merit selection (p. 228)
Defense attorney (p. 237)	Prosecuting attorney (p. 235)
Double jeopardy (p. 243)	Public defender (p. 238)
Entrapment (p. 242)	Right–wrong test (p. 244)

REVIEW QUESTIONS

1. What are the five methods by which judges are selected?
2. Why is the partisan election method of selecting judges currently under severe criticism?
3. What are the key points of the merit selection plan for selecting judges?
4. What is meant by “good judging,” and why is courtroom civility so important?
5. Why is the prosecutor believed to occupy the most powerful position in the criminal justice system?
6. What is prosecutorial immunity, and why is it both important and potentially dangerous in our adversarial system?
7. What is a defense attorney’s primary responsibility under the Sixth Amendment?
8. Which individuals play prominent roles in the courtroom work group?
9. What is double jeopardy, why does this constitutional protection from the Fifth Amendment exist, and what are some examples of exceptions to the rule?
10. How can age, entrapment, intoxication, and duress each be used as a criminal defense?

LEARN BY DOING

1. Your local League of Women Voters is establishing a new study group to better understand merit selection, or the so-called Missouri Plan for selecting judges, to be better informed when the matter comes up for a referendum. You are asked to explain this system of selecting judges, including its pros and cons when compared with, say, judges running for election on a partisan ticket. Develop your presentation.
2. You have been asked by your criminal justice department chairperson to participate in the annual “Career Day” program that the faculty conducts. The focus is on different careers in law enforcement, courts, and corrections. Because the faculty members know you recently completed an internship with your local prosecutor’s office, they ask you to make a presentation on the functions and challenges that exist for a prosecutor. Develop and organize into a 10-minute speech what you will say in your comprehensive presentation.

3. You join a mock trial team, and you are examining current justice issues stemming from past cases. Your team is assigned to determine if prosecutors could retry O. J. Simpson based on new evidence. Many years after O. J. Simpson was acquitted of murdering his ex-wife and her friend, he published a book titled *If I Did It*, which detailed how he “could have” committed the murders. Could a new trial be granted based on the information Simpson shared in his book? Prepare a presentation to explain which Constitutional protections should be considered, and why.
4. Below is a case study grounded in actual case facts and chapter materials concerning self-defense. Answer the following questions yourself before reviewing answers and/or outcomes for the case in the Notes section. For purposes of discussion, however, approach all of the questions as if there are no absolute, totally correct answers.
 A woman is at home with her two children when her estranged husband arrives and begins threatening and assaulting her, following a pattern of alleged past conduct with this woman and prior women. Fearing for her and her children’s safety, she flees to the garage but later claims she was unable to open the garage door. Instead, she gets a gun out of her car and returns to the house. Her husband tells her he will kill her, and their young son witnesses the threat. The woman fires a warning shot that hits the wall behind the husband and then deflects into the ceiling, injuring no one. The woman is charged with aggravated assault with a deadly weapon, but she lives in a “stand your ground” jurisdiction and argues that she acted in self-defense.
 - How can the prosecutor argue that the woman had no right to “stand her ground” and exercise her self-defense rights? What other options did she have in the situation?
 - How can the defense argue that this is precisely the type of case in which the wife should be able to argue self-defense? What other facts would you want to know about the husband–wife relationship?
 - What are the dangers if the wife is successful at using this defense? What are the dangers if she fails and is convicted of attempted murder? Think about broader social policy issues.⁷⁵



©iStockphoto.com/simpson33

11

COURT METHODS AND CHALLENGES

Sentencing and Punishment

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 11.1** Describe the historical development of, and different philosophies regarding, crime and the goals of punishment from the colonial era to today, and how different types of prisons were built accordingly.
- 11.2** Describe the differences between, and purposes of, both determinate and indeterminate sentences.
- 11.3** Review federal- and state-level sentencing guidelines.
- 11.4** Explain the law and purposes surrounding the use of victim impact statements.
- 11.5** Describe the fundamental arguments for and against capital punishment, including key Supreme Court decisions concerning its existence and application, methods of execution, and DNA exonerations from death sentences.
- 11.6** Describe aggravating and mitigating circumstances as they apply to sentencing decisions.
- 11.7** Explain the right to appeals by those who are convicted.

ASSESS YOUR AWARENESS

Test your knowledge of criminal sentencing and punishment by responding to the following seven true-false items; check your answers after reading this chapter.

1. Historically, people have been punished for one purpose only: retribution.
2. A small number of people commit a disproportionately large number of offenses.
3. Today, U.S. society adheres to the rehabilitation model, which considers incarcerated persons to have been failed by society and emphasizes treatment of those who offend.
4. Sentences of persons who are convicted can be served in determinate or indeterminate and concurrent or consecutive configurations.
5. Prosecutors and defense attorneys can influence judges' sentencing decisions.
6. Victims' families are not allowed to present impact statements in court at the time of sentencing.
7. Federal sentencing guidelines are to be merely advisory and not mandatory.

Answers can be found on page 401.

Rogel Aguilera-Mederos was 26 years old, transporting timber in a semitrailer truck across Colorado, when his brakes failed. He drove his semitrailer into stopped Interstate I-70 traffic on April 25, 2019, causing a fiery 28-car pileup. The accident killed four people and wounded six others. In October 2021, a jury found Aguilera-Mederos guilty of 10 counts of attempted first-degree assault, six counts of first-degree assault, four counts of vehicular homicide, four counts of careless driving causing death, two counts of vehicular assault, and one count of reckless driving.

District Court Judge Bruce Jones sentenced Aguilera-Mederos to 110 years in prison based on the mandatory minimums set under state law. The judge did not believe the sentence was appropriate—feeling it was too harsh for crimes in which the offender lacked criminal intent—but the law did not permit the judge to exercise discretion and impose a shorter prison sentence. Aguilera-Mederos wept at the sentencing. He apologized, said he never meant to hurt anyone, and asked for forgiveness.

Families of the victims, who also believed Aguilera-Mederos should be sentenced to prison but for a shorter period, were permitted to provide victim impact statements. Some of the victims stated:¹

- *Sometimes it feels like being half a person when you lose your spouse. . . . We were a team.*
- *He [Aguilera-Mederos] made a deliberate and intentional decision that his life was more important than everyone else on the road that day.*
- *My dad was taken away from me. . . . A huge person in my life just never came home.*

In January 2022, after 5 million people signed a petition calling for a sentence reduction, the Colorado governor commuted the convicted man's sentence to 10 years in the Department of Corrections. He will be eligible to apply for parole in 5 years. The victims' families and the district attorney have called for a hearing to increase the sentence to 20 to 30 years.²

As you read this chapter and learn about the history and theories of punishment and sentencing in the United States, think about the moment when a court hands down a sentence to a someone convicted of a crime. What are we trying to achieve through the process? How can we best offer redress to victims and communities, if at all, through punishment and sentencing? Should victims or their families be allowed to testify, or is such testimony too inflammatory to juries? Similarly, should defendants be allowed to make statements about their crime and punishment? Finally, how can we possibly find an appropriate punishment for every new person who offends, or for the thousands of people who commit repeat offenses who move through our criminal justice system every year?

INTRODUCTION

For what reasons and purposes are people punished? Do punishments always fit the crimes committed? Does capital punishment work? Punishing those who violate the right to life, liberty, and property of their fellow human beings is one of the primary functions of the American criminal justice system. However, many questions concerning the “how” and “how much” need to be addressed. As will be seen in this chapter, sentencing and punishment are complicated issues, with financial and societal considerations that must be included in these discussions.

Although violent crime rates had been steadily declining until recently, people are increasingly being victimized by intelligent white-collar criminals, identity thieves, and cybercriminals. How should our society deal with these new types of offenses? Into this complicated mix might also be included the adage that “it is better to let a hundred guilty people go free than to convict one innocent person.” The federal and state sentencing guidelines discussed in this chapter indicate how much concern and effort have recently gone into sentencing and punishment. This chapter approaches sentencing and punishment from several perspectives, including their purposes, types, and methods, as well as the more recent influence of DNA evidence. Also examined are capital punishment and criminal appeals.

PURPOSES OF PUNISHMENT

The need to punish some of our fellow citizens has existed since the beginning of time—at least since biblical times, and likely much earlier. It would seem there have always been attempts—by a variety of methods and for a variety of reasons—to convince people they should change their behavior and either obey the customs and laws of their society or suffer the consequences. Very often those attempts at changing behaviors meant that—by one means or another, such as imprisonment, banishment, or death—people committing offenses would be removed from society in such a way that they were no longer able to do further harm to their fellow citizens. Here, we discuss the four goals of punishment—some or all of which are hoped to be achieved by all societies, even the most primitive. Furthermore, we will see that throughout history, crimes and criminals have been viewed and punished differently, depending on several factors.

Four Goals

What follow are the historical reasons and goals for **punishment** of our fellow citizens—what is hoped will be achieved:

- *Retribution:* **Retribution** has its roots in Old Testament law where, in Exodus 21:24, the phrase “eye for eye, tooth for tooth, hand for hand, foot for foot” appears for the first time—labeled *lex talionis*, the law of equitable retribution. Death penalty supporters also quote this phrase often as justification for their position. However, neither the phrase “eye for eye” nor the verse itself is a complete sentence, and the death penalty is not mentioned. For many people, eye for eye dictates that persons committing offenses should be punished in a manner that reflects their crime: It is instinctive for people to want to get even when wronged by another, and it is deeply engrained within ourselves and our society that punishment should be meted out when someone breaks the law.
- *Deterrence:* **Deterrence** probably makes more sense than retribution in terms of betterment of society because it is not grounded on our primal human emotions and instincts. The concept of deterrence stems from the classical school of criminology. Since people will typically avoid unpleasant things, they are much less likely to commit a crime if they know that punishment will result if they are caught. Deterrence has two components: general and specific. By seeing others being punished for their crimes, the public experiences a *general* deterrent effect because they can see what will befall them should they engage in similar behavior. *Specific* deterrence involves using punishment against specific persons for their criminal acts to discourage them from committing such acts again in the future.
- *Incapacitation:* **Incapacitation**, by its very meaning, is beneficial in that it prevents criminals from victimizing others by placing them in a situation where they are physically unable to commit crimes. The best examples, of course, are incarceration in jails and prisons as well as execution. Bear in mind, however, that one can still commit crimes while in a state of incarceration. The methods of community corrections—probation and parole and other alternatives to incarceration—are forms of incapacitation that also aim to prevent offenders from committing new crimes.
- *Rehabilitation:* Almost since its beginning, the modern criminal justice system has had as a primary goal—indeed a responsibility—to change persons who commit offenses so they become law-abiding citizens—in other words, to rehabilitate them. In fact, for most of the 20th century, **rehabilitation** was the system’s primary goal in terms of how it was to function and be organized. Since the mid-1960s, however, that ideology has been modified to the point that it is hardly recognizable.³ The reasons for this ideological change are several and include changing governmental priorities, other concerns of the public (as revealed in national polls), and institutional and political resistance to change.⁴ Furthermore, politicians can point to the historical “nothing works” idea put forth by Robert Martinson, who studied prison programs and found no “appreciable effect” on recidivism. Still, a wide array of correctional programs (i.e., vocational, educational, counseling) continues to be offered in prisons and jails, and with marked success. One cost–benefit analysis of 14 correctional treatment programs found that, in all but one of the programs, program benefits outweighed program costs. Such programs can be crucial for assisting convicted persons to reenter society and not recidivate (commit more crimes).⁵

Sentencing and punishment must accomplish one or more of these goals if the public is to be supportive of them. If increases in prison and jail sentences do not provide effective means of preventing crime, then a more cost-effective strategy must be found that will target the persons most likely to commit serious crimes at high rates. As a federal report noted,

It is frequently observed that a small number of offenders commit a disproportionately large number of offenses. If prison resources can be effectively targeted to high-rated offenders, it should be possible to achieve . . . levels of crime control. The key to such a policy rests on an ability to identify high-rate offenders . . . and at relatively early stages in their careers.⁶



Placing people in stocks was used internationally and during medieval, Renaissance, and colonial American times as a form of physical punishment as well as for public humiliation.

©iStockphoto.com/duncan1890

Factors Influencing Punishment

As noted earlier, sentencing and punishment involve issues concerning their financial and societal benefit. On average, it costs about \$39,000 per year to house an incarcerated person in prison,⁷ but costs vary widely by jurisdiction. For example, the annual cost of imprisoning a single incarcerated person in California is greater than \$106,000, exceeding the cost of attending Harvard.⁸ For that amount of money, society expects to be able to accomplish one or more of the four goals described earlier. Regarding the cost–benefit effect of prisons, some researchers argue that prisons should be used to greater advantage, believing it is at least twice as costly to let an incarcerated person loose in society than it is to lock them up. For example, comparing the cost of incarceration with the human and financial toll of crime, prison expert John DiIulio Jr. believes that prisons are a “real bargain.”⁹

In addition to victims making their wishes known early on to the prosecution concerning punishment, as well as victim impact statements and aggravating or mitigating circumstances involved in a crime (discussed later in this chapter), there are other factors that influence sentencing and punishment. First, the U.S. Constitution speaks briefly but forcefully regarding the use of punishment. The Eighth Amendment provides that incarceration will not involve “cruel and unusual punishment” and fines will not be excessive. Furthermore, the Thirteenth Amendment states that U.S. citizens have a right against involuntary servitude.

Prosecutors can influence the sentencing decision by agreeing to engage in plea negotiation in terms of the number of charges filed or the maximum penalty the judge may impose, or by explaining to the sentencing judge that the incarcerated person was particularly cruel in their crime or, alternatively, was very cooperative with the police and/or remorseful about the crime. In many states, prosecutors can also make a specific sentencing recommendation to the court that has been agreed upon with the defense.

Defense attorneys probably have less influence than prosecutors over sentencing decisions. Nonetheless, they can seek to obtain the lightest sentence possible, including probation or other alternatives to sentencing, as well as emphasize prior to sentencing such things as the defendant’s minor involvement in the crime, the victim’s participation, and so on.

The seriousness of the offense is the most important factor in determining the sentencing received for an offense. For instance, a violent crime against a person warrants a harsher penalty than an offense against one's property, and the judge, jury, prosecutor, and defense attorney must consider the victim's suffering when carrying out their roles in arriving at a proper punishment.

Where sentencing is concerned, next in importance is the defendant's prior criminal record. The existence of a lengthy criminal record—particularly a record of violence or even habitual crimes against property, such as home invasion—can weigh heavily in terms of sentencing and punishment. Many states have habitual offender laws, which are related to and often viewed as identical to three-strikes laws (see the accompanying You Be the . . . Judge box.) These laws vary widely from state to state but typically apply only to felonies and require third-time felons to serve a mandatory 25 years to life. Furthermore, many police departments have repeat-offender units dedicated solely to surveilling known persons at higher risk of committing offenses.

YOU BE THE . . . JUDGE

A habitual offender is essentially one who has been convicted of a crime several times (either a misdemeanor or a felony and typically at least twice). Habitual offender laws usually impose additional punishments on such persons. Such laws can even address traffic violations. For example, a first-time driving under the influence (DUI) offense is usually a misdemeanor that results in a fine and jail time of less than 1 year. However, upon being arrested for a second or third DUI, the individual may be charged with a felony (depending on state law). Being classified as a habitual offender can thus result in higher criminal fines, longer jail or prison sentences, and loss of various rights and privileges (e.g., the right to own a firearm or to possess a driver's license).

An example is a Florida law stating that

If you receive three (3) or more convictions of serious offenses on separate occasions you will be deemed a habitual offender. Examples of serious traffic offense include voluntary manslaughter while driving, involuntary manslaughter while driving, [and] felony while driving. Other serious traffic offenses include not stopping at an accident with a personal injury or death, or driving with a suspended or revoked license. Three convictions of these offenses and you will be considered a habitual traffic offender.

1. Do you agree with the spirit and intent of habitual offender laws?
2. Are such laws too harsh or too lenient?

Sources: See LegalMatch, "What Is a Habitual Offender," <http://www.legalmatch.com/law-library/article/what-is-a-habitual-offender.html>.

Punishment Models, Methods, and Reforms

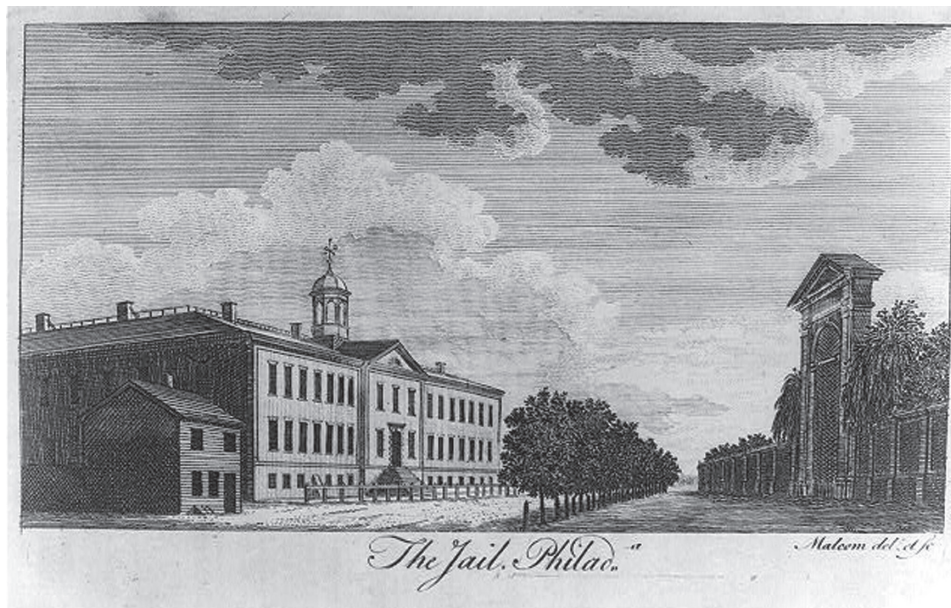
Philosophies of crime and punishment have changed significantly since the late 1700s when the United States was relatively sparsely populated and predominantly rural. However, with the Industrial Revolution came a new concept of criminal punishment embracing various correctional methods (see timeline in Table 11.1).¹⁰

TABLE 11.1 ■ A Timeline of Correctional Models

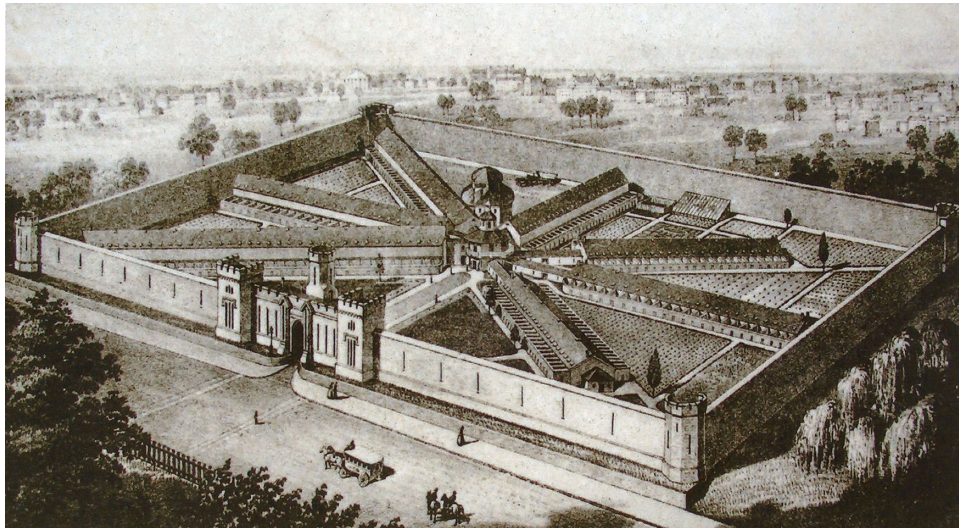
1600s–1790s	The Colonial Model
1790s–1870s	The Penitentiary Model
1870s–1890s	The Reformatory Model
1890s–1930s	The Progressive Model

1930s–1960s	The Medical Model
1960s–1970s	The Community Model
1970s–2000s	The Crime Control Model

- *The colonial model (1600s–1790s)*: During the colonial period, most Americans lived under laws that were transferred from England. Puritans rigorously punished violations of religious laws, and banishment from the community, fines, death, and other punishments were the norm. Use of the death penalty was common.
- *The penitentiary model (1790s–1870s)*: With the Industrial Revolution—and increasing populations—came a new concept of criminal punishment. Persons committing criminal offenses were to be isolated from the bad influences of society and from one another so that, while engaged in productive labor, they might reflect on their past misdeeds and be “penitent” or remorseful for their crimes. As a result, what has been termed “the first American penitentiary, if not the first one in the world” was established in Philadelphia in 1790: the Walnut Street Jail. This penitentiary introduced the institutional pattern of outside cells with a central corridor and the use of solitary confinement as the central method of reforming incarcerated persons to the good life. Incarcerated persons were also segregated according to “age, sex, and the type of the offenses charged against them.”¹¹ Auburn Prison, built in New York in 1821, reflected this shift, emphasizing individual cell-block architecture to create an environment to rehabilitate and reform, separate criminals from all contact with corruption, and teach them moral habits by means of severe discipline. Incarcerated persons worked as contract convict labor 10 hours per day, 6 days per week. The Auburn model influenced the emergence of reform schools and workhouses in the 1820s. Then, Eastern State Penitentiary, a huge fortress with thick walls near Philadelphia, was built in 1829, emphasizing complete solitary confinement rather than Auburn’s contract labor. New incarcerated persons wore hoods when marched to their cells so they would not see other incarcerated persons. Regimentation included use of the lockstep (marching everywhere in single file), shuffling with the head turned right, practices that continued into the 1930s. No visitors, mail, or newspapers were allowed. The design of this prison became the most influential in U.S. history.



What is often termed the “first American penitentiary, if not the first in the world” was established in Philadelphia in 1790: the Walnut Street Jail.



Built in 1829, Eastern State Penitentiary, a huge fortress near Philadelphia, emphasized complete solitary confinement.

Mike Graham

- *The reformatory model (1870s–1890s)*: By the middle of the 1800s, reformers became disillusioned with the results of the penitentiary movement, and soon a new generation of reform came to the fore, motivated by humanitarian concerns. This new approach to penology emphasized change related to the incarcerated persons and indeterminate sentences. Fixed sentences, lockstep, silence, and isolation were seen as destructive to incarcerated persons' initiative. This wave of prison reform began with the founding of today's American Correctional Association in 1879 and the building of Elmira Reformatory in 1876. At Elmira, Zebulon Brockway began classification and segregation of incarcerated persons, as well as providing vocational training and rewards for good behavior—including early release for good behavior and parole. Brockway's "New Penology" included the creation of specialized institutions to care for the young, females, and the mentally impaired. The juvenile court system, created in Chicago in 1899, gave wide discretionary powers to judges, and Indiana's Female Prison and Reformatory Institution for Girls and Women was opened in Indianapolis in 1873. Incarcerated persons began producing license plates, constructing public highways, and working at prison farms and factories that produced food and items for internal consumption. In 1927, the first federal prison for women opened in Alderson, West Virginia; the minimum-security, campuslike prison used residential cottages for incarcerated persons. Elsewhere, the camps that housed incarcerated persons working on roads became models for minimum-security prisons that emerged in the 1930s. Then, with Congress recognizing the need to build federal penitentiaries, the Three Prisons Act of 1891 authorized the first federal penitentiaries. The old army prison at Fort Leavenworth, Kansas, became the first U.S. penitentiary in 1895; the second opened in 1902 at Atlanta, Georgia; and the third was located at the old territorial prison on McNeil Island in Puget Sound, Washington.
- *The progressive model (1890s–1930s)*: The first two decades of the 20th century saw the Progressives—activists seeking to address perceived social problems caused by corruption in government, urbanization, industrialization, and immigration—wanting to understand and cure crime; they sought, first, to improve social conditions that appeared to breed crime and, second, to treat persons prone to commit offenses so they would lead crime-free lives. Treatment would be focused on the individual and their specific problem. Probation was launched as an alternative to incarceration, allowing persons who commit offenses to be treated in the community under supervision, and indeterminate sentences came into being.
- *The medical model (1930s–1960s)*: Grounded in positivist criminology, this model generally included the idea that incarcerated persons are mentally ill, and the emphasis of corrections shifted to treatment. Incarcerated persons were seen as those whose social, psychological, or

biological deficiencies had caused them to engage in illegal activity and who should receive treatment. Rehabilitation took on national legitimacy and became the primary purpose of incarceration. The Federal Bureau of Prisons was established in 1930 to oversee the 11 federal prisons then in existence. In 1933, Alcatraz was acquired from the U.S. Army for a federal prison. The gangster era was in full swing, and national Prohibition wrought violent crime waves. Alcatraz was the ideal solution—serving the dual purpose of holding public enemies and being a visible icon to warn this new brand of criminal. Under Warden James A. Johnston, Alcatraz's rules of conduct were among the most rigid in the correctional system, and harsh punishments were delivered to incarcerated persons who defied prison regulations. More in keeping with the medical model was the appointment in 1937 of James V. Bennett as director of the Federal Bureau of Prisons. In 1941, he built the Federal Correctional Institution at Seagoville, Texas, a prison without walls. Similar prisons became widespread in the 1960s. Different treatment programs were offered to incarcerated persons, and the Federal Prison Industries program, which began in 1934, allowed incarcerated persons to be furloughed out of prison for work and other purposes.



In 1941, James V. Bennett, director of the Federal Bureau of Prisons, oversaw construction of the Federal Correctional Institution at Seagoville, Texas, a prison without walls.

AP Photo/Anonymous

- *The community model (1960s–1970s)*: Following the prison riot and hostage taking at New York state's Attica Correctional Facility in 1971, prisons were seen as artificial institutions that interfered with the incarcerated person's ability to develop a crime-free lifestyle. Community reintegration was the dominant idea until the 1970s, when it gave way to a new punitive stance in criminal justice.
- *The crime control model (1970s–2000s)*: The pendulum swung again in the late 20th century—and continues today—with the public becoming concerned about rapidly rising crime rates and studies of treatment programs for incarcerated persons challenging their success and worth. Critics attacked the indeterminate sentence and parole, calling for longer sentences for career criminals and violent offenders. Legislators, judges, and officials responded with determinate sentencing laws, three-strikes laws, mandatory sentencing laws (e.g., doubling one's sentence for a crime committed with a weapon), and so forth.

PRACTITIONER'S PERSPECTIVE

CRIMINAL DEFENSE ATTORNEY



Name: Ruth Moyer

Position: Criminal Defense Attorney

Location: Philadelphia, Pennsylvania

How long have you been a practitioner in this criminal justice position? I've been practicing law for six years.

What is your career story? I received my bachelor's degree in history, and I attended Temple Law School. While I was in law school, I took many public law elective courses. I took a course on federal courts and jurisdiction, an elective course on posttrial review in criminal cases, and I also audited a course on the death penalty, which I found very interesting. While I was in law school, I also interned in the U.S. attorney's office, which gave me a more prosecutorial background. Now, I work at a criminal defense firm, which is very small. So I definitely have gotten a sense of both sides of the criminal justice system.

What are the primary duties and responsibilities of a practitioner in this position? I write many, many trial motions and trial memorandums. I've served as court-appointed counsel for defendants charged with misdemeanors who are unable to afford their own counsel. I've also done a lot of work at the appellate and collateral review stages of litigation in which, after a person has been convicted, either at trial or through a guilty plea, he has a right to challenge his conviction through what's called an appellate review or collateral review.

What are some challenges you face in this position? One of the greatest challenges of criminal defense attorneys is really twofold: First is ensuring that an innocent person isn't convicted, and second is ensuring to the extent possible that even when a person is guilty the government doesn't obtain the conviction in some violation of a person's rights. One very specific challenge I've encountered is with defendants who have no prior criminal record. And I've encountered this a lot with my court-appointed misdemeanor clients. One conviction for an otherwise law-abiding person with no criminal history could have very detrimental consequences on their life. It could result in a loss of employment and a whole range of collateral consequences.

What advice would you give to someone either wishing to study, or now studying, criminal justice and wanting to become a practitioner in this position? One skill I think is important is the ability to listen. And listening is important whether it's interviewing clients or a potential witness or in court during cross-examination. Another very important skill is the ability to ask the right questions. That can be either researching a legal issue or in a courtroom, asking a witness the right question. Another very important skill, of course, is oral advocacy. Good oral advocacy develops through lots and lots of practice. It's not something that most people are innately born with. The ability to analyze law and to write well are also very important skills. Unfortunately, sometimes those skills aren't

emphasized as much as they should be for criminal defense attorneys. But so much of being an effective advocate for one's client requires the ability to really analyze a statute; or take five different cases and the holding from each of those cases and make it into one coherent rule; or to write a brief that's going to persuade a judge on a close legal issue.

Making Punishment Fit the Crime

We might consider punishment from this perspective: A report by Amnesty International discusses capital punishment around the world, including beheadings in Saudi Arabia; hangings in Japan, Iraq, Singapore, and Sudan; firing squads in Afghanistan, Belarus, and Vietnam; stonings in Iran; and “the only country in the Americas that regularly executes: the United States.” Amnesty reports that in the 54 countries retaining the death penalty, at least 28,567 people are now under sentence of death, and at least 483 people were executed worldwide in 2020, excluding China (which does not release its figures, but estimates are in the thousands).¹² This represents the lowest number of executions recorded in the past decade. The death penalty was administered to 17 people in 2020 in the United States (and that number has generally declined since 2000).¹³

The concept of “justice” and acts deserving of punishment vary across nations. Consider that in many other countries people are executed for their political thoughts, apostasy (improper religious beliefs), and “highway robbery”—or that people are flogged 80 times for possessing alcohol, or, as in Singapore, flogged with a rattan cane for vandalism.¹⁴ Although the crime rates in these venues are likely to be relatively low, the question to be asked, related to classical theory, is this: Are these punishments proportional to these crimes?

For many people who commit offenses in the United States, being sentenced to prison is a “step up,” partly because there they receive “three hots and a cot” without having to support a family, and they might even be surrounded by their family, friends, and affiliate gang members. If that sad commentary on American life is true, then one is left to wonder how our society can allow that to happen—or, perhaps, why we devote the time, effort, and money—at least \$81 billion annually for state and local corrections expenditures alone¹⁵—to basically warehouse 2.9 million people.¹⁶ Some observers might say we should abandon the warehousing approach and make every effort to try to identify those individuals for whom the prison experience can be beneficial. Then, while those individuals are a captive audience in prison, we should make all manner of rehabilitative educational and vocational programming available to them. But others might argue that those incarcerated persons for whom prison is a step up should be put to work at hard labor, to make prison life less attractive and thus discourage them from repeat offending. But which way should the pendulum swing?

The accompanying You Be the . . . Legislator box poses some thought-provoking questions regarding punishment. As you read them, consider the four goals of punishment discussed earlier, as well as your own philosophy concerning punishment.

YOU BE THE . . . LEGISLATOR

In June 2019, Alabama enacted a law that requires persons convicted of child sex offenses (those who abused children under the age of 13) to undergo “chemical castration” as a condition of parole. Although one representative initially advocated a surgical approach to castration, the approved method involves administering drugs to reduce testosterone levels. The law is highly controversial, with some critics arguing it violates basic human rights and others pointing to research findings that suggest a high libido is not linked to child sexual abuse. Think about this form of punishment from a lawmaker's standpoint:

1. Do you support this approach to managing recidivism of persons committing sex offenses? Would you alter your opinion if you were told that chemical castration was effective in only a very small number of cases? What if you were told it was not effective at all?
2. How do politics play a role in proposing new laws for heinous crimes?
3. Which, if any, of the four goals for punishment outlined at the beginning of the chapter does this punishment achieve?

4. Does it matter if lowering testosterone levels, even if only for a limited time, produces long-term health consequences?
5. Does this punishment violate the Eighth Amendment?

Source: James Hamblin, "Alabama Moves to State-Ordered Castration: A New Law for Child Sex Offenders Harkens Back to a Time When Much Less Was Known About Human Sexuality," *The Atlantic*, June 11, 2019, <https://www.theatlantic.com/health/archive/2019/06/alabama-chemical-castration/591226/>.

TYPES OF SENTENCES TO BE SERVED

How offenders serve their sentences—in a determinate or indeterminate, as well as a concurrent or consecutive, fashion—is a crucial distinction, particularly in terms of how long a person who has offended must remain in prison and where parole is concerned. Next, we distinguish between these types.

Determinate and Indeterminate Sentences

Determinate sentencing is either legislatively determined or judicially determined. In states using a determinate sentencing structure, persons convicted of an offense are sentenced for a fixed term, such as 10 years. There is no opportunity for a paroling authority to release an incarcerated person early. Incarcerated persons are released at the expiration of their term, minus any good-time credits. Under a legislatively determined structure, the legislature fixes by law the penalty for specific offenses or offense categories. In a judicially determined system, the judge has broad discretion to choose a sanction, but once imposed, it is not subject to change.

Conversely, in an indeterminate sentencing format, the convicted individual will be sentenced for a set range of time, such as 5 to 10 years, so their conduct inside the prison system, amenability to rehabilitative efforts (e.g., educational, vocational, and counseling programs), apparent remorsefulness, and so forth can be taken into account in deciding a release date. The legislature sets a broad range of time, expressed as minimum and maximum sentences, for a particular offense or category of offenses, and the responsibility for determining the actual term of incarceration is divided between the judge and the parole board. The judge's sentence is also made in terms of a minimum and a maximum term.

The authority of a parole board to grant discretionary release to a prisoner before the expiration date of the maximum term varies from state to state. The parole board determines the actual release date, typically using a formula for determining earliest parole eligibility, which may occur after a percentage of the minimum, after a percentage of the maximum, or after the entire minimum has been served, depending on the state.¹⁷ Those persons supporting the rehabilitative ideal for incarcerated persons will obviously be more in favor of indeterminate sentencing, which allows for the length of sentence to be adjusted in response to the incarcerated person's positive responses to treatment and programs.¹⁸



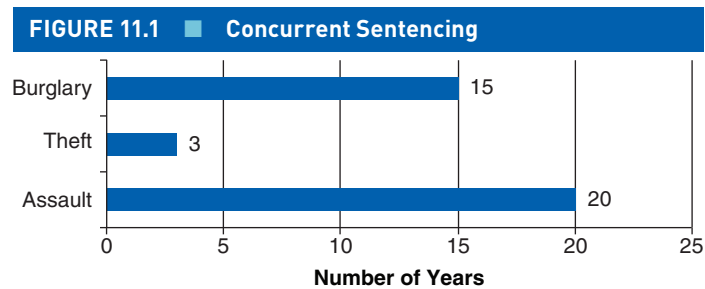
Incarcerated persons often appear before their parole board to express remorse for their crimes, to explain how they have progressed while in prison, and to offer reasons they should be released and placed on parole.

Mikael Karlsson/Alamy Stock Photo

Concurrent and Consecutive Sentences

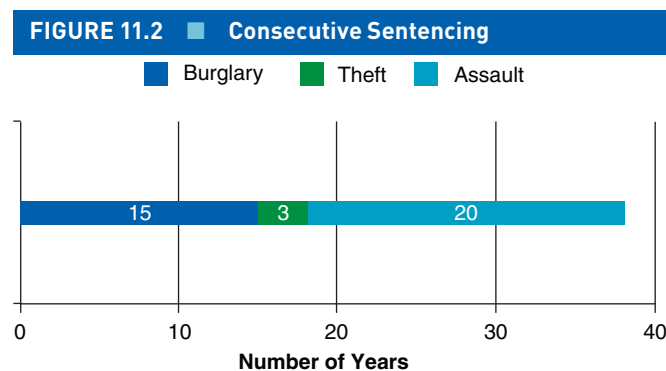
Assume that a man is convicted for committing three separate offenses as part of a night's crime spree: He unlawfully entered a couple's home (burglary), stole several valuable items (a felony theft), and violently assaulted the husband in making his escape. He is sentenced to 15 years, 3 years, and 20 years, respectively, for each of these crimes. Depending on the sentencing court's decision, he will serve his three sentences for those crimes either concurrently or consecutively.

A *concurrent* sentence means he will serve all three sentences *at the same time*, with each sentence running along the same timeline, along parallel tracks as shown in Figure 11.1.



Because these sentences are running at the same time, the maximum amount of time the man will do is 20 years—his sentences of 3 and 15 years will have already run during the 20-year sentence.

If, instead, he is to serve the three sentences *consecutively*, each sentence will be served separately—in other words, when he finishes serving the sentence for the first crime, he immediately begins serving the sentence for the second crime, and so on. This approach is often referred to as “stacking” the sentences—one after the other—to maximize the sentence length, as shown in Figure 11.2.



In this sentencing approach, the incarcerated person would serve a total of approximately 38 years ($15 + 3 + 20$), subject to reductions for good behavior and parole eligibility.

SENTENCING GUIDELINES

The growing complexity and importance of the **sentencing guidelines** now found in criminal justice pose a bit of a dilemma for this introductory course textbook: On the one hand, they are too complicated to discuss comprehensively or in great detail; on the other hand, they are far too important to ignore. Therefore, this section strives to achieve an appropriate balance by looking at the guidelines in summary form.

Background: Legislation and Court Decisions

In the mid- to late 1970s and early 1980s, many people were becoming discontented with the indeterminate sentencing process; they witnessed incarcerated persons often being released after serving only a fraction of their sentences (some jurisdictions even allowed 30 days of “good-time” reduction

of a sentence for each 30 days served). That, coupled with renewed concern about the rising crime rate throughout the nation, resulted in wide experimentation with sentencing systems by many states and the creation of sentencing guidelines at the federal level.

Federal Sentencing Guidelines

After more than a decade of research and debate, Congress decided (1) the sentencing discretion given federal trial judges needed to be structured; (2) the administration of punishment needed to be more certain; and (3) specific persons committing offenses (e.g., white collar and violent, repeat offenders) needed to be targeted for more serious penalties.¹⁹ As a result, Congress abolished indeterminate sentencing at the federal level and created a determinate sentencing structure through the federal sentencing guidelines. The Sentencing Reform Act²⁰ was enacted in 1984 to ensure that similarly situated defendants were sentenced in a more uniform fashion rather than depending on the judge to which they happened to be assigned.²¹ The federal sentencing system was thus reformed by these methods:

- Dropping rehabilitation as one of the goals of punishment
- Creating the U.S. Sentencing Commission and charging it with establishing sentencing guidelines
- Making all federal sentences determinate
- Authorizing appellate review of sentences²²

A long line of legal challenges ensued involving these sentencing guidelines. The first such challenge came from the state of Washington, where the petitioner had pleaded guilty to kidnapping. Under Washington's law, the maximum penalty for that offense is 10 years. A separate range-of-sentence provision limited the maximum allowable sentence to 53 months, but it authorized an upward departure (i.e., longer sentences) for "exceptional" judge-determined factors. The trial judge increased the sentence to 90 months because the crime was committed with deliberate cruelty. Because the facts supporting the enhanced penalty were neither admitted by the petitioner nor found by a jury, the U.S. Supreme Court held in *Blakely v. Washington* (2004) that the sentence violated the petitioner's Sixth Amendment right to trial by jury.²³ This decision, however, applied only to Washington.

Then, 6 months later, the Supreme Court decided *United States v. Booker*, this time addressing sentencing guidelines nationally.²⁴ The defendant, Booker, was found guilty by a jury of possessing at least 50 grams of crack cocaine (he actually had 92.5 grams). Under those facts, the guidelines required a possible 210- to 262-month sentence. Although the jury never heard any such evidence, the judge, finding by a preponderance of the evidence that Booker possessed the much larger amount of cocaine, rendered a sentence that was almost 10 years longer than what the guidelines prescribed. By a vote of 5–4, the U.S. Supreme Court found that the U.S. sentencing guidelines violated the Sixth Amendment by allowing judicial, rather than jury, fact-finding to form the basis for the sentencing; in other words, letting in these judge-made facts is unconstitutional. The unconstitutional guidelines also allowed judges to make such determinations with a lesser standard of proof than the jury's "beyond a reasonable doubt" and to rely on hearsay evidence that would not be admissible at trial.²⁵ The Court did not discard the guidelines entirely. The guidelines, the Court said, are to be merely advisory and not mandatory. Thus, the guidelines are a resource a judge can look at but may choose to ignore. Although courts still must "consider" the guidelines, they need not follow them. In addition, sentences for federal crimes will become subject to appellate review for unreasonableness, allowing appeals courts to clamp down on sentences that seem far too harsh.

In late 2007, the U.S. Supreme Court went further and explained what it meant in 2005 by “advisory” and “reasonableness,” deciding two cases that together restored federal judges to their traditional central role in criminal sentencing. The Court found that district court judges do not have to justify their deviations from the federal sentencing guidelines and that they have broad discretion to disagree with the guidelines and to impose what they believe are reasonable sentences—even if the guidelines call for different sentences. Both cases—*Gall v. United States*²⁶ and *Kimbrough v. United States*²⁷—were decided by the same 7–2 margin and chided federal appeals courts for failing to give district judges sufficient leeway. Further, in 2017, by a vote of 7–0, the U.S. Supreme Court struck down an argument that the federal sentencing guidelines are too vague, again noting that these are not strict guidelines—that they merely provide advice to judges who use their own discretion when determining appropriate sentences.²⁸

State-Level Sentencing Guidelines

Several states have enacted sentencing guidelines. As an example, Table 11.2 shows the sentencing grid used by the state of Washington, which has developed a sophisticated and objective sentencing tool called *The Adult Sentencing Guidelines Manual*.²⁹ This manual provides comprehensive information on adult felony sentencing as set forth under state law, identifying the seriousness level of the offense and “scoring” the incarcerated person’s criminal history. The seriousness of crimes listed on the vertical axis ranges from Level I (which includes offenses such as simple theft, malicious mischief, attempting to elude a pursuing police vehicle, and possessing stolen property) to Level XVI (aggravated murder, which includes first-degree murder with one or more of several aggravating circumstances). The offender score listed on the horizontal axis ranges from 0 to 9+, and it is determined based on five factors: (1) the number of prior convictions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the offender’s custody status at the time the crime was committed; and (5) the length of time between offenses.

Going Global 11.1

Sentencing Guidelines in Australia

As in the United States, Australia has introduced sentencing guidelines to promote more consistent and evidence-driven sentencing practices, as well as to improve public confidence in the justice system. Sentencing guidelines have been introduced in separate legislation aimed at Australia’s six states, two mainland territories, and the federal jurisdiction. Legislation in all jurisdictions provides general guidance concerning the factors that should be considered during sentencing. The country continues to debate the potential need for mandatory minimum sentencing laws, but as with U.S. sentencing guidelines, Australian guidelines simply provide guidance and are not mandatory in nature. Judges retain substantial sentencing discretion.

To provide greater transparency, the Judicial Conference of Australia created a booklet to answer questions that the public may have about how sentencing occurs; for example,

- What factors do judges consider?
- How much discretion does the judge have?
- Why are particular penalties chosen?
- Will the sentence be effective?

You can access the booklet by searching here: www.districtcourt.wa.gov.au.

Source: To learn more about sentencing guidelines used in common law countries throughout the world, visit the Library of Congress, Legal Reports—Sentencing Guidelines at www.loc.gov/law/help/sentencing-guidelines/index.php.

TABLE 11.2 ■ State of Washington Sentencing Grid

OFFENDER SCORE											
	0	1	2	3	4	5	6	7	8	9+	
LEVEL XVI	LIFE SENTENCE WITHOUT PAROLE/DEATH PENALTY										
LEVEL XV	180-240	187.5-249.75	195.75-260.25	203.25-270.75	210.75-280.5	218.25-291	234-312	253.5-337.5	277.5-369.75		308.25-411
LEVEL XIV	92.25-165	100.5-175.5	108-183	115.5-190.5	123.75-198.75	131.25-206.25	146.25-221.25	162-237	192.75-267.75		223.5-297.75
LEVEL XIII	92.25-123	100.5-133.5	108-144	115.5-153.75	123.75-164.25	131.25-174.75	146.25-195	162-216	192.75-256.5		223.5-297.75
LEVEL XII	69.75-92.25	76.5-102	83.25-110.25	90-120	96.75-128.25	103.5-138	121.5-162	133.5-177	156.75-207.75		180-238.5
LEVEL XI	58.5-76.5	64.5-85.5	71.25-93.75	76.5-102	83.25-110.25	90-118.5	109.5-145.5	119.25-158.25	138.75-183.75		157.5-210
LEVEL X	38.25-51	42.75-56.25	46.5-61.5	50.25-66.75	54-72	57.75-76.5	73.5-97.5	81-108	96.75-128.25		111.75-148.5
LEVEL IX	23.25-30.75	27-36	30.75-40.5	34.5-45.75	38.25-51	42.75-56.25	57.75-76.5	65.25-87	81-108		96.75-128.25
LEVEL VIII	15.75-20.25	19.5-25.5	23.25-30.75	27-36	30.75-40.5	34.54-5.75	50.25-66.75	57.75-76.5	65.25-87		81-108
LEVEL VII	11.25-15	15.75-20.25	19.5-25.5	23.25-30.75	27-36	30.75-40.5	42.75-56.25	50.25-66.75	57.75-76.5		65.25-87
LEVEL VI	9-10.5	11.25-15	15.75-20.25	19.5-25.5	23.25-30.75	27-36	34.5-45.75	42.75-56.25	50.25-66.75		57.75-76.5
LEVEL V	4.5-9	9-10.5	9.75-12.75	11.25-15	16.5-21.75	24.75-32.25	30.75-40.5	38.25-51	46.5-61.5		54-72
LEVEL IV	2.25-6.75	4.59	9-10.5	9.75-12.75	11.25-15	16.5-21.75	24.75-32.25	32.25-42.75	39.75-52.5		47.25-63
LEVEL III	0.75-2.25	2.25-6	3-9	6.75-9	9-12	12.75-16.5	16.5-21.75	24.75-32.25	32.25-42.75		38.25-51
LEVEL II	0-67.5 days	1.5-4.5	2.25-6.75	3-9	9-10.5	10.5-13.5	12.75-16.5	16.5-21.75	24.75-32.25		32.25-42.75
LEVEL I	0-45 days	0-67.5 days	1.5-3.75	1.5-4.5	2.25-6	3-9	9-10.5	10.5-13.5	12.75-16.5		16.5-21.75

Source: Washington State Adult Sentencing Guidelines Manual, ver 20201103 Drug Offense Sentencing Grid A for Offenses Committed on or after July 1, 2003, and sentenced before July 31, 2013.

VICTIM IMPACT STATEMENTS

Victim impact statements are written or oral information provided in court—most commonly at sentencing—and at an incarcerated person’s parole hearings concerning the impact of the crime on the victim and the victim’s family. These statements generally inform the court of the crime’s financial, emotional, psychological, and/or physical impact on their lives. They provide a means for the court to refocus its attention on the human cost of the crime, as well as for the victim to participate in the criminal justice process. The right to make an impact statement is generally available not only to the victim but also to survivors of homicide victims, the parent or guardian of a minor victim, and a person representing an incompetent or incapacitated victim. Victims can present oral or written impact statements, with some states allowing victims to submit video- or audiotaped statements. Some states allow child victims to present drawings to explain how the crime affected them.³⁰




Victim impact statements are increasingly common in the sentencing phase of criminal cases, where the focus has traditionally been on the person committing the offense rather than the victims and their loved ones. These statements help judges and juries to more fully understand the impact of a crime and what punishment is appropriate.

Boston Globe/Getty Images


Victim impact statements were upheld in 1991 by the U.S. Supreme Court in *Payne v. Tennessee*.³¹ Payne was convicted of two counts of murder for stabbing to death a mother and her 2-year-old daughter and also wounding her 3-year-old son. During the sentencing hearing, the boy’s grandmother described how the killings affected the surviving grandson. On appeal, the Supreme Court held the victim has a right to be heard and quoted from a 1934 opinion by Justice Benjamin Cardozo: “Justice, though due to the accused, is due to the accuser also.”³² In 2016, the U.S. Supreme Court reiterated that victim impact statements concerning how the crime has impacted the individual are permissible but that statements containing victims’ opinions concerning the crime, defendant, or appropriate sentence violate the Eighth Amendment.³³

Given that victim impact statements incorporate the victim's experience into the justice process and bolster victim's rights, you might be surprised to learn that a recent American Civil Liberties Union's political director is against the national campaign to allow these statements. Jeanne Hruska argues that one well-known victim impact statement law, specifically California's Marsy's Law (see Figure 11.3), is "poorly drafted and a threat to existing constitutional rights."³⁴ She notes that our constitutional rights (at both the national and state levels) protect individuals against government abuse and that defendants' rights apply only when the state might harm an accused—not a victim. In her view, the law "pits victims' rights against defendants' rights" and strengthens the power of the state. See the accompanying Case Study 11.1 for more discussion and an example from such a statement.

FIGURE 11.3 ■ California's Marsy's Law



California Attorney General's Office



Contact Name: _____

Phone No.: _____

Police Report / Case No.: _____

Notes: _____

Marsy's Card and Resources

The California Constitution, Article 1, Section 28(b), confers certain rights to victims of crime. Those rights include:

1. Fairness and Respect – To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
2. Protection from the Defendant – To be reasonably protected from the defendant and persons acting on behalf of the defendant.
3. Victim Safety Considerations in Setting Bail and Release Conditions – To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
4. The Prevention of the Disclosure of Confidential Information – To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
5. Refusal to be Interviewed by the Defense – To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
6. Conference with the Prosecution and Notice of Pretrial Disposition – To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
7. Notice of and Presence at Public Proceedings – To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
8. Appearance at Court Proceedings and Expression of Views – To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
9. Speedy Trial and Prompt Conclusion of the Case – To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
10. Provision of Information to the Probation Department – To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
11. Receipt of Pre-Sentence Report – To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
12. Information About Conviction, Sentence, Incarceration, Release, and Escape – To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
13. Restitution
 - A. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
 - B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
 - C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

14. The Prompt Return of Property – To the prompt return of property when no longer needed as evidence.
15. Notice of Parole Procedures and Release on Parole – To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
16. Safety of Victim and Public are Factors in Parole Release – To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
17. Information About These 16 Rights – To be informed of the rights enumerated in paragraphs (1) through (16).

Additional Resources

The Attorney General does not endorse, have any responsibility for, or exercise control over these organizations' and agencies' views, services, and information.

Victim Compensation Board – Can help victims pay for: mental health counseling, funeral costs, loss of income, crime scene cleanup, relocation, medical and dental bills. 1-800-777-9229 www.victims.ca.gov

CA Dept. of Corrections and Rehabilitation, OVSRS – Provides information on offender release, restitution, parole conditions and parole hearings when the offender is incarcerated in prison. 1-877-256-6877 www.cdcr.ca.gov/victim_services

McGeorge School of Law – Victims of Crime Resource Center - Provides resources for victims by their geographic area along with information on victims' rights. 1-800-Victims (1-800-842-8467) www.1800victims.org

National Domestic Violence Hotline – 1-800-799-7233 www.thehotline.org

Adult Protective Services County Information – (Elder abuse) 24 hour hotline numbers by county in California. www.cdss.ca.gov/inforesources/County-APS-Offices

National Child Abuse Hotline – Treatment and prevention of child abuse. 1-800-422-4453 www.childhelp.org

Rape, Abuse & Incest National Network – 1-800-656-4673 www.rainn.org

National Human Trafficking Resource Center Hotline – 24-hour hotline: 1-888-373-7888 www.humantraffickinghotline.org

The California Relay Service: For speech impaired, deaf or hard-of-hearing callers: Dial 711. TTY/HCO/VCO to Voice for English: 1-800-735-2929 and for Spanish: 1-800-855-3000. Voice to TTY/VCO/HCO for English: 1-800-735-2922 and for Spanish: 1-800-855-3000. Speech to Speech – English and Spanish: 1-800-854-7784.

Attorney General's Victims' Services Unit – Provides local victim/witness information, geographic resource information and appeal status to victims of crime. For more information, call 1-877-433-9069 or visit www.oag.ca.gov/victimservices For local Human Trafficking information, visit: www.oag.ca.gov/human-trafficking

A 'victim' is defined under the California Constitution as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim." (Cal. Const., art. I, § 28(e).)

A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the above rights in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request. (Cal. Const., art. I, § 28(c)(1).)

Funding is made possible through the United States Department of Justice, Victims of Crime Act, 2016-VA-GX-0057



VSU Rev 10/2017

Marsy Nicolas, a 21-year-old college student, was shot and killed by her former boyfriend. Nicholas's family became key backers of a California Victims' Bill of Rights approved by voters in 2008. This proposition is known as "Marsy's Law" and calls for increased protection and rights for victims. In the way accused persons are read their *Miranda* rights, victims in California who are contacted by police are now informed of their Marsy's rights and are provided with a "Marsy's card" that lists these rights.

Case Study 11.1

Victim Impact Statements

In June 2006, Brock Allen Turner, a champion swimmer at Stanford University, was found guilty of three counts of sexual assault. Facing a possible sentence of 14 years in state prison, the nation was shocked by the judge's lenient sentence: 6 months in county jail and probation. The other notable outcome of this case that captured national attention was the impact statement his victim (referred to as "Emily Doe") read to Turner at his sentencing. She began by saying, "Your Honor, if it is all right, for the majority of this statement I would like to address the defendant directly." Excerpts from her letter follow:

- "You don't know me, but you've been inside me, and that's why we're here today."
- "All I was told was that I had been found behind a dumpster, potentially penetrated by a stranger, and that I should get retested for HIV because results don't always show up immediately."
- "After work, I would drive to a secluded place to scream. I didn't talk, I didn't eat, I didn't sleep, I didn't interact with anyone, and I became isolated from the ones I loved most."
- "One day, I was at work, scrolling through the news on my phone, and came across an article. . . . This is how I learned what happened to me—sitting at my desk, reading the news at work."

- “To conclude, I want to say thank you . . . to the deputy who waited beside me, to the nurses who calmed me, to the detective who listened to me and never judged me, to my advocates who stood unwaveringly beside me. . . . Thank you to girls across the nation that wrote cards to my DA to give to me, so many strangers who cared for me.”
1. Consider how victim impact statements might strengthen the state’s power and increase the chance of an overly harsh sentence. Do you think this is a significant concern, or do the benefits of victim impact statements outweigh potential costs?
 2. Should persons convicted of offenses be allowed to offer statements during their sentencing phase? Why or why not?

Source: Katie J. M. Baker; “Here’s the Powerful Letter the Stanford Victim Read to Her Attacker,” *BuzzFeed News*, June 3, 2016, <https://www.buzzfeednews.com/article/katiejmbaker/heres-the-powerful-letter-the-stanford-victim-read-to-her-ra>.

CAPITAL PUNISHMENT

Because of its finality, debate concerning the death penalty has always been emotionally charged. Strong arguments have been put forth by those who favor and those who oppose **capital punishment**.

Arguments For and Against

For a politician or political entity to try to fashion a state or national policy on the death penalty that would definitively appeal to most Americans would be nearly impossible. The U.S. Supreme Court has halted death sentences and then approved them, and several states have done likewise (largely because many persons convicted of murder on death row have been found to be innocent). Some studies indicate the death penalty works to prevent crimes of murder, and other studies show the opposite. Americans themselves seem fickle in their views of whether killers should be put to death.

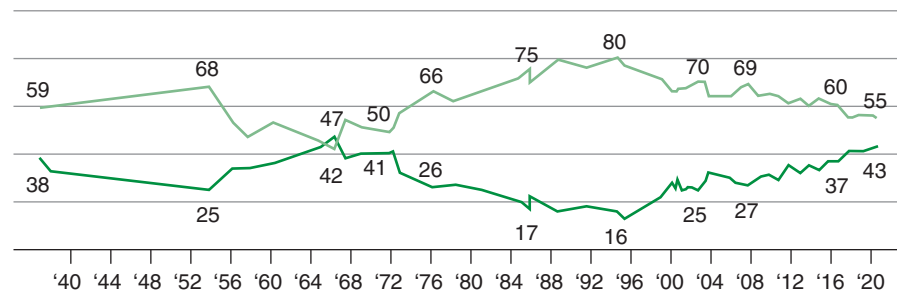
Figure 11.4 shows the percentages of Americans who favor and oppose the death penalty. The percentages of people in favor of the death penalty rose steadily for the most part from about 1967 to 1995; from that point, however, there has been an overall decline in such support, dropping from about 80% to about 55%. Meanwhile, the percentage of people saying they are in opposition to the death penalty is about the same today as it was in 1937, with 43% of the population reporting they are not in favor, despite a significant drop to about 16% in the mid-1990s.

FIGURE 11.4 ■ Percentage of Americans Favoring and Opposing the Death Penalty

Americans’ Support for the Death Penalty, 1936–2020

Are you in favor of the death penalty for a person convicted of murder?

■ % In favor ■ % Opposed



GALLUP

Source: Copyright © 2020 Gallup, Inc. All rights reserved. The content is used with permission; however, Gallup retains all rights of republication.

Arguments in Favor

People who support the death penalty often believe it deters other people from committing murder, while others base their stand on theological grounds—the commandment “Thou shalt not kill.” Others favor capital punishment because of the retribution it provides to family members and friends of the victim; “getting even” is a proper punishment in the eyes of many people, rather than some rehabilitative ideal. It is society’s nod to *lex talionis*—“eye for an eye”: If you kill one of us, we will kill you. One thing the death penalty most certainly accomplishes, however, is the prevention of future murders by the incarcerated person put to death. As James Q. Wilson noted, “Whatever else may be said about the death penalty, it is certain that it incapacitates.”³⁵

Does the existence of a death penalty deter individuals from committing murder? That is an important question, and one that is at the tip of the spear in this debate. The answer, unfortunately, is elusive, and it depends largely on which set of studies one looks at and gives credence to. Beginning in 2003, several studies were published that reportedly demonstrated the death penalty saves lives by acting as a deterrent to murder. One study that garnered a large amount of attention, conducted by Mocan and Gittings, analyzed 6,143 death sentences imposed in the United States between 1977 and 1997. Results indicated that each execution resulted in five fewer murders, and each commutation of a death sentence to a long or life prison term resulted in five additional homicides. Further, each additional removal from death row when one’s sentence was vacated resulted in one additional homicide.³⁶ Another study, by professors at Emory University, using a panel data set of more than 3,000 counties from 1977 to 1996, found that each execution resulted in 18 fewer murders and that the implementation of state moratoria was associated with an increased incidence of murders.³⁷ Then, two studies by a Federal Communications Commission economist also supported the deterrent effect of capital punishment, finding that each additional execution, on average, resulted in 14 fewer murders³⁸ and that executions conducted by electrocution were the most effective at providing deterrence.³⁹ Most recently, a study found that the murder rate in New Jersey increased after the state’s repeal of the death penalty.⁴⁰ However, the findings of these studies were challenged by other criminologists.

Arguments in Opposition

Arguments against the death penalty include that it does not have any deterrent value, that it is discriminatory against underrepresented populations, that retribution is unfitting for a civilized society, and that it can (and does) claim the lives of innocent people.



Many people oppose capital punishment and express their disapproval by protesting against it—especially when someone is about to be executed.

©REUTERS/Richard Carson

At least two criminologists have identified serious flaws in the Mocan–Gittings study, which found that each execution resulted in five fewer murders. Richard Berk, using Mocan and Gittings’s original data set, removed the Texas data, ran the model exactly as the original authors did for the other 49 states, and found that the deterrent effect disappeared.⁴¹

A second reexamination of the Mocan–Gittings study was conducted by Jeffrey Fagan, who, by modifying their measure of deterrence, also found that all the deterrent effects disappeared. Rather than prove that Mocan and Gittings erred in their assumptions, Fagan showed that small changes in their assumptions could produce wild fluctuations in their deterrence estimates.⁴² Recent studies find no evidence that (1) the presence of a state death penalty statute deters murders in the United States⁴³ or (2) that the death penalty deters robbery or homicide in Japan.⁴⁴

Regarding the contention that the death penalty is discriminatory, many people would agree with a finding by the U.S. Government Accountability Office that there is “a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty.”⁴⁵ Amnesty International argues, furthermore, that “from initial charging decisions to plea bargaining to jury sentencing, African Americans are treated more harshly when they are defendants, and their lives are accorded less value when they are victims. All-white or virtually all-white juries are still commonplace in many localities.”⁴⁶ Following are other findings regarding the death penalty discrimination thesis:

- A report sponsored by the American Bar Association concluded that one third of African American persons on death row in Philadelphia would have received sentences of life imprisonment if they had not been African American.
- A study of death sentences in Connecticut conducted by Yale University School of Law revealed that African American defendants receive the death penalty at 3 times the rate of white defendants in cases where the victims are white. In addition, killers of white victims are treated more severely than people who kill people from underrepresented populations when it comes to deciding what charges to bring.
- A study released by the University of Maryland concluded that race and geography are major factors in death penalty decisions. Specifically, in Maryland, depending on who is killed and where, prosecutors are more likely to seek a death sentence when the race of the victim is white and less likely to seek a death sentence when the victim is African American.⁴⁷

Finally, of course, is the argument that innocent people can be—and have been—executed for crimes they never committed, which is discussed in the Wrongful Convictions section.

Key Supreme Court Decisions

In *Furman v. Georgia* (1972), by vote of 5–4, the U.S. Supreme Court, for the first time, struck down the death penalty under the cruel and unusual punishment clause of the Eighth Amendment. The decision involved not only Furman, convicted for murder, but also two other men (in Georgia and Texas) convicted for rape; juries at the trials of all three men had imposed the death penalty without any specific guides or limits on their discretion. The justices for the majority found this lack of guidelines or limits on jury discretion to be unconstitutional, as it resulted in a random pattern among those receiving the death penalty; one justice also felt that death was disproportionately applied to the low income and socially disadvantaged and felt those groups were denied equal protection under the law.⁴⁸

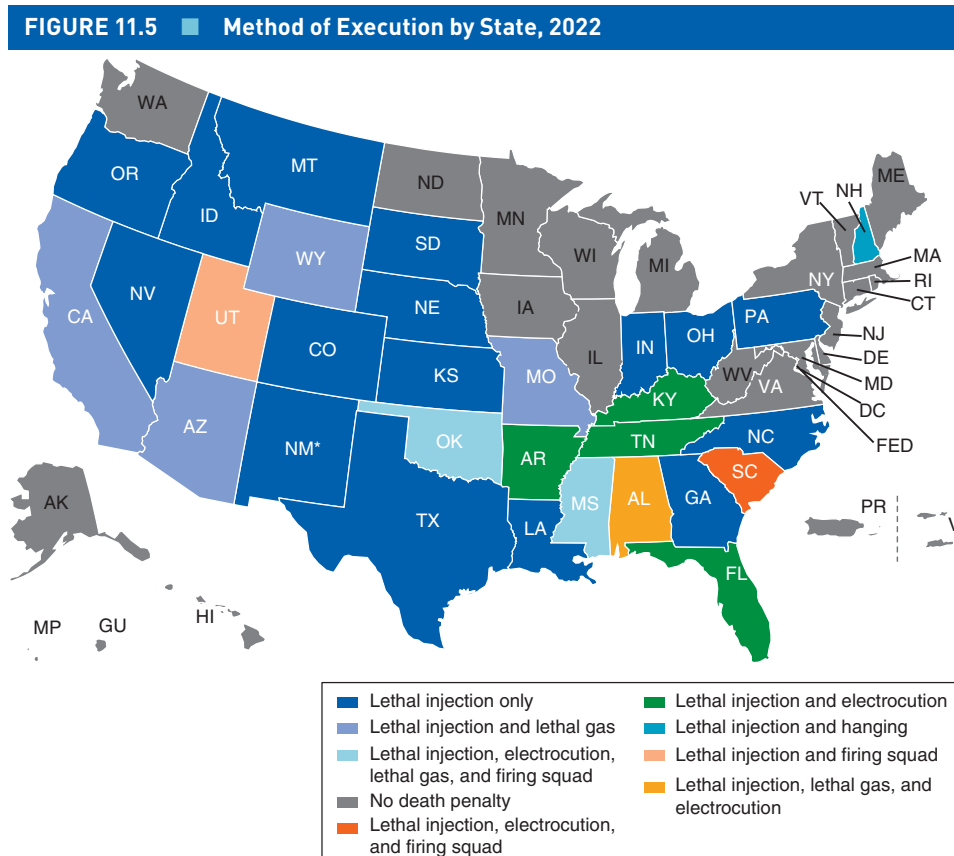
Four years after *Furman*, the Supreme Court rendered another major death penalty decision. A Georgia jury had found Troy Gregg guilty of armed robbery and murder and sentenced him to death. Gregg challenged his death sentence, claiming it was, per se, a “cruel and unusual” punishment that violated the Eighth and Fourteenth Amendments. In a 7–2 decision, the Court held that a punishment of death did not violate the Constitution. Where a defendant has been convicted of deliberately killing another person, the careful and judicious use of the death penalty may be appropriate if employed carefully. The Court noted that Georgia’s death penalty statute required a bifurcated proceeding (where the trial and sentencing are conducted separately), as well as specific jury findings as to the severity of the

crime and the nature of the defendant and a comparison of aggravating and mitigating circumstances.⁴⁹ Another significant decision was rendered by the Supreme Court in 2005, in *Roper v. Simmons*, holding that the Eighth and Fourteenth Amendments forbid the execution of incarcerated persons who were under the age of 18 when their crimes were committed.⁵⁰ In addition, the Supreme Court has held that

- The Eighth Amendment prohibits the execution of persons who are mentally incompetent at the time of their execution.⁵¹
- The death penalty cannot be applied to adults who rape children (and, more broadly, that a state cannot impose the death penalty for a crime that did not result in the death of the victim, except for crimes committed against the state—i.e., espionage, treason).⁵²
- To show their legal counsel was ineffective, defendants in capital cases must prove the attorney’s performance was less than reasonable (e.g., counsel did not present mitigating circumstances) and that there is a reasonable likelihood this substandard performance changed the outcome of the trial.⁵³
- People who are opposed to the death penalty cannot be automatically excluded from serving on juries in capital cases; however, people whose opposition is so strong as to “prevent or substantially impair the performance of their duties” (*Witherspoon v. Illinois*, 1968) may be removed from the jury pool during *voir dire* (preliminary examination).⁵⁴

Methods of Execution

Here, we discuss the methods of execution in use today in the United States. Figure 11.5 shows methods of execution by state.



Source: Death Penalty Information Center, “Methods of Execution,” <http://www.deathpenaltyinfo.org/executions/methods-of-execution>.

Although death by lethal injection has been widely thought to be much more humane than other methods, several challenges to this method of execution have been raised in the U.S. Supreme Court in recent years (and botched executions have ignited the out-of-court debate; see the accompanying Case Study 11.2). Such challenges typically claim the drugs used in the executions cause extreme and unnecessary pain, while masking the pain being experienced by the incarcerated person, and thus violate the Eighth Amendment's ban on cruel and unusual punishment. In *Baze v. Rees* (2008), the U.S. Supreme Court held that the three-drug "cocktail" used by 35 states and the federal government did not violate the Eighth Amendment.⁵⁵ Chief Justice John Roberts observed that a method of execution would violate the Constitution only if it was deliberately designed to inflict pain. Two years earlier, Clarence Hill was on Florida's death row and challenged the use of lethal injection, per se, as causing unnecessary pain contrary to contemporary standards of decency; however, by a vote of 5–4, the U.S. Supreme Court denied a stay of execution (Justice Antonin Scalia noted that lethal injection is much less painful than hanging), and Hill was executed in September 2006.⁵⁶



Lethal injection is the most used method of execution in the United States. Shown here is the lethal execution chamber at San Quentin prison in California.

Handout/Getty Images News/Getty Images

The U.S. Supreme Court continues to rule on issues related to the death penalty. Some recent cases include the following:⁵⁷

- March 4, 2022: The Court overruled a First Circuit Court of Appeals decision, which would have overturned Dzhokhar Tsarnaev's (the Boston Marathon Bomber) death sentence.
- November 1, 2021: The Court reversed lower court orders, granting John Henry Ramirez's preliminary injunction prohibiting execution until the Texas Department of Criminal Justice fully considered and documented his request to allow his pastor to "lay hands" on and "pray over" him during the execution.
- February 25, 2020: The Court declined to overturn James Erin McKinney's Arizona death sentences for killing two people while committing burglaries, despite the trial judge dismissing mitigating evidence concerning the defendant's childhood filled with severe abuse and his subsequent development of post-traumatic stress disorder.
- March 23, 2020: The Court declined to require that Kansas readopt an insanity test (the state no longer permits this defense); James Kahler's lawyers believed such a test would have resulted in a finding of not guilty by reason of insanity since Kahler killed his four family members while experiencing a major depressive episode.

Case Study 11.2

The Reality of Death by Lethal Injection

A series of botched executions in recent years has stirred the death penalty debate anew and refocused criticisms on the perceived “humane” method of lethal injection. In several cases since 2009, prison officials struggled for significant periods of time to find a suitable vein for the intravenous (IV) delivery of lethal drugs used in executions:

- Ohio (2009): Romell Broom: More than 2 hours to find a suitable vein in arms and legs; execution was stopped after Broom appeared to be in agonizing pain.
- Georgia (2010): Brandon Rhode: 40 minutes to find a vein; 14 minutes for Rhode to die.
- Arizona, Ohio, and Oklahoma (2014): Joseph R. Wood, Dennis McGuire, and Clayton D. Lockett: Took exceedingly long periods of time to die (24 minutes–1 hour and 40 minutes), calling into further question the efficacy of the three-drug method and the death penalty in general.
- Georgia (2015): Brian Keith Terrell: More than 1 hour to properly insert an IV, eventually finding a suitable vein in Terrell’s hand.
- Georgia (2016): Brandon Jones: After more than 30 minutes of unsuccessful attempts to insert an IV into Jones’s arms, a physician was asked to violate several medical ethics codes and spent 13 minutes inserting and stitching the IV near Jones’s groin to complete the execution.
- Alabama (2016): Ronald Bert Smith Jr.: 34 minutes to die after drugs were administered; heaved, gasped, and coughed; clenched his fists and raised his head during the procedure.
- Ohio (2017): Alva Campbell: After officials spent 80 minutes trying to achieve successful needle insertion, the execution was called off.
- Alabama (2018): Doyle Lee Hamm: Execution called off after attempting to find a vein for 2.5 hours; leaving 10 to 12 puncture marks and piercing Hamm’s bladder and femoral artery.
- Oklahoma (2021): John Marion Grant: Grant convulsed and vomited for several minutes after administration of the first drug (midazolam).

Source: Death Penalty Information Center, “Examples of Post-*Furman* Botched Executions,” <https://deathpenaltyinfo.org/executions/botched-executions>.

Wrongful Convictions: Rethinking the Death Penalty

Being convicted of a crime is no guarantee that one is truly guilty as charged. It means simply that a jury or judge was persuaded by the state’s case against the defendant, or in the case of plea bargaining, the defendant was persuaded to plead guilty to avoid trial. Today, we know many innocent people have nonetheless been convicted and, in some cases, sentenced to death, until their names were cleared—they were exonerated—by DNA evidence (see the accompanying Case Study 11.3). As of May 2022, the Death Penalty Information Center reports that 187 persons on death row in the United States have been exonerated since 1973, including at least 29 people previously facing death whose innocence was proved through DNA evidence.⁵⁸

These **exonerations** and problems with executions have not gone unnoticed. Since 1973, there has been an average of almost four death row exonerations a year.⁵⁹ Only about half of U.S. states still retain the death penalty. As of 2021, 23 states and the District of Columbia have abolished the death penalty, while there is a governor-imposed moratorium on executions in three others—Oregon, Pennsylvania, and California.⁶⁰ The U.S. Supreme Court held in 2002 that the execution of the intellectually disabled was unconstitutional⁶¹ and that the finding of an aggravating factor justifying a death sentence must be made by a jury, not merely by the sentencing judge.⁶² Then, in 2005, the Court limited the death penalty even further, ruling that executing incarcerated persons who were juveniles at the time of their crimes is cruel and unusual punishment.⁶³ U.S. Supreme Court decisions continue to have significant ramifications for death penalty’s application across the United States.

Case Study 11.3

Exonerations

Thomas James was convicted of murder in 1991. The year prior, two armed men entered an apartment complex in Miami, Florida. One was wearing a mask, and the other was only wearing a cap—his face was visible. The men encountered Dorothy Walton, whose mother lived in the complex. They rifled through her purse and demanded money. Walton's stepfather witnessed the exchange and confronted the men. The stepfather also had a gun, but he was shot in the head and killed. Terrified, Walton pointed to a container holding over \$300. The men grabbed the container and fled the scene.

Witnesses who saw the men running from the complex identified perpetrators as Vincent Williams, also known as "Dog," and Tommy James. When investigators pulled mugshots of people with similar names and nicknames, they found 22-year-old Thomas James, who lived about 30 minutes away. None of the witnesses identified this Thomas James as the "Dog" or Tommy James who ran from the complex. But Walton identified Thomas James as the perpetrator. When asked if she was sure, she said, "I'm positive of it. I will never forget his face. I will never forget his eyes. I see him now." Other witnesses were not permitted to testify.

After reopening the investigation (and Walton, under subpoena, stated she might have been mistaken in her identification), the state attorney's office filed a motion to vacate James's conviction, stating, "What appears to be a chance coincidence that the defendant, Thomas Raynard James, had the same name as a suspect named by witnesses and anonymous tipsters as 'Thomas James' or 'Tommy James' led to the defendant's photograph being included in a lineup and set in motion a mistaken identification. . . . In the final analysis, at best, the evidence that the defendant committed this crime is unclear and unconvincing, and at worst it is just plain wrong." Interviews and evidence (including a polygraph taken by James) determined that this was a case of mistaken identity. In April 2022, James was exonerated and set free.

James's case is extraordinary because so few people are exonerated after being found guilty. But the fact that he was wrongfully imprisoned in the first place is not so unique. His case is classic and highlights some of the issues that typically lead to wrongful convictions: faulty eyewitness identifications, ineffective assistance of counsel, and exclusion of exculpatory evidence at trial.

James is one of more than 3,092 people who have been exonerated in the United States since 1989, who together served more than 27,000 years of incarceration. Because of these cases, it is hoped that reforms in place or under-way throughout the criminal justice system (regarding reformed lineup/eyewitness identification procedures, evidence collection and preservation, and videotaping of police interrogations, for example) will give professionals and offenders alike more confidence in the system.

Sources: The Innocence Project, May 2022, <http://www.innocenceproject.org>; National Registry of Exonerations, University of Michigan, May 2022, <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

Recent Trends in Federal Executions

In July 2019, U.S. Attorney General William Barr ordered the Bureau of Prisons to schedule executions for five people on federal death row. All five of these incarcerated persons had been convicted of crimes involving the murder of children.⁶⁴ Barr's Justice Department directive followed a 16-year period in which the federal government had not carried out capital punishment sentences for those awaiting execution.

The U.S. federal government has executed only three incarcerated persons since 1988: two in 2001 and one in 2003.⁶⁵ All three were executed using lethal injection. Following Barr's order to carry out the capital punishment sentences, 13 people were executed in 2020 and 2021. In ordering the executions, Barr said, "Congress has expressly authorized the death penalty through legislation adopted by the people's representatives in both houses of Congress and signed by the president. . . . Under Administrations of both parties, the Department of Justice has sought the death penalty against the worst criminals, including these five murderers, each of whom was convicted by a jury of his peers after a full and fair

proceeding. The Justice Department upholds the rule of law—and we owe it to the victims and their families to carry forward the sentence imposed by our justice system.”⁶⁶ In mid-2021, U.S. Attorney General Merrick Garland, appointed by President Biden—who called for an end to capital punishment on his campaign trail—ordered a moratorium on federal executions.⁶⁷ This directive has suspended the scheduling of executions for the 44 incarcerated persons currently on federal death row.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

In passing sentence, judges (and, in death penalty cases, the jury) will look at factors other than the crime itself. They consider the way the crime was committed to determine whether they should increase or decrease the severity of the punishment. In other words, the judge or jury might “look behind” the crime to see if, for example, the victim was tortured prior to being killed or if the defendant played a minor role in the offense. These are termed aggravating and mitigating circumstances or factors.

Aggravating circumstances can include use of a weapon, an especially heinous or cruel crime, commission of murder for hire, or the incarcerated person being a peace officer engaged in official duties.⁶⁸ *Mitigating circumstances* include little or no prior criminal history, the incarcerated person’s acting under duress or under the influence of mental illness or extreme emotional disturbance, or the incarcerated person being young.⁶⁹ Under the Supreme Court’s decision in *Gregg v. Georgia*, discussed earlier, the judge will also instruct the jury members they may not impose the death penalty unless they first determine the existence of one or more statutory aggravating circumstances beyond a reasonable doubt, as well as determine that the aggravating circumstances outweigh the mitigating circumstances beyond a reasonable doubt.

CRIMINAL APPEALS

In an appeal, one who has been convicted for a crime attempts to show that the trial court made a legal error that affected the decision in the case or that they had ineffective counsel or that due process was violated in some other way. The defendant now asks a higher (appellate) court to review the transcript of the case for such errors—and possibly to have the conviction overturned or be granted a retrial. In addition, the defendant may contest the trial court’s sentencing decision without challenging the underlying conviction. Then, if the appellate court grants the appeal, it may reverse the lower court’s decision in whole or in part. However, if the appellate court denies the appeal, the lower court’s decision stands.⁷⁰

Article I, Section 9, of the Constitution speaks only briefly and indirectly to criminal appeals, saying that the privilege of the *writ of habeas corpus* shall not be suspended, “unless when in Cases of Rebellion or Invasion the public Safety may require it.” The name of this writ, often referred to as “the great writ,” is Latin for you have the body. *Habeas corpus* is the incarcerated person’s means of asking a court to grant a hearing to determine they are being held illegally.

Convicted persons who are indigent (living in poverty) are entitled to free legal counsel for their initial appeal⁷¹ and a free copy of their trial transcript.⁷² (However, the Supreme Court has held that incarcerated persons are not entitled to free legal counsel for subsequent “discretionary” appeals.⁷³) Furthermore, incarcerated persons also have a right to access law libraries, and many law schools have defender clinics in which law students represent persons incarcerated in state and federal prisons in appellate and postconviction litigation in state and federal courts. This is in addition to prison “writ-writers”—incarcerated persons who over time develop considerable expertise in constitutional law and means of filing writs and petitions.

Not only are incarcerated persons able to challenge their criminal conviction on a variety of grounds (the evidence introduced against them; the police arrest, search, and seizure of their person and property; the judge’s instructions to the jury; and so on), but after being incarcerated, they may attempt to obtain what are called postconviction remedies—making what are termed “collateral attacks.” These lawsuits are civil in nature (unlike the original appeal of their conviction) and challenge, for example, the conditions of their confinement. Such cases often list the prison warden as the respondent and can involve the incarcerated person’s filing a *writ of habeas corpus*, typically in a federal court having jurisdiction over their place of incarceration.

IN A NUTSHELL

- Historically, we have punished people for the following reasons: retribution, deterrence, incapacitation, and rehabilitation. The U.S. Constitution speaks only briefly but forcefully regarding the use of punishment. The Eighth Amendment provides that incarceration will not involve “cruel and unusual punishment” and that fines will not be excessive.
- Prosecutors can influence the sentencing decision by agreeing to engage in plea negotiations concerning the number of charges filed or the maximum penalty the judge may impose, by explaining that the accused was very cooperative with the police and/or remorseful for the crime, and so on. Defense attorneys can seek to obtain the lightest possible sentence, or other alternatives to sentencing, or they can emphasize such things as the defendant’s minor involvement in the crime.
- The seriousness of the offense is the most important factor in determining the sentencing received for an offense, followed by the defendant’s prior criminal record.
- Philosophies of crime and punishment have changed significantly since the late 1700s; today, people are calling for longer sentences for career criminals and violent offenders. Legislators, judges, and officials have responded with determinate sentencing laws, three-strikes laws, mandatory sentencing laws (e.g., doubling one’s sentence for a crime committed with a weapon), and so forth.
- Under *determinate* sentencing, convicted persons are sentenced for a fixed term, such as 10 years, with no opportunity for a paroling authority to reduce time served. Conversely, in an *indeterminate* sentencing format, the individual convicted will be sentenced for a set range of time, such as 5 to 10 years, allowing for the length of sentence to be adjusted in response to the incarcerated person’s positive responses to treatment and programs.
- Becoming discontented with the sentencing process and the rising crime rate throughout the nation, Congress abolished indeterminate sentencing at the federal level and created a determinate sentencing structure through the federal Sentencing Reform Act. The U.S. Supreme Court found that the guidelines violated the Constitution by allowing judicial, rather than jury, fact-finding to form the basis for the sentencing. The Court said the guidelines are to be merely advisory and not mandatory. Thus, the guidelines are a resource a judge can look at but may choose to ignore.
- Victim impact statements are written or oral information provided in court—most commonly at sentencing—and at the incarcerated person’s parole hearings, concerning the impact of the crime on the victim and the victim’s family. These statements generally inform the court of the crime’s financial, emotional, psychological, and/or physical impact on their lives.
- Supporters of the death penalty often believe it deters other people from committing murder, while others base their stand on theological grounds. Others favor capital punishment because of the retribution it provides to family members and friends of the victim. Arguments against the death penalty include that it does not have any deterrent value, that it is discriminatory against underrepresented populations, that retribution is unfitting for a civilized society, and that it can (and does) claim the lives of innocent people. There is some, but not unanimous, research in support of the deterrence argument.
- In 1972, the U.S. Supreme Court struck down all death penalty laws as being cruel and unusual punishment, due to the way the sanction was being administered. The Court later approved the death sentence in concept. Today, lethal injection is the method of execution authorized in most states.
- Since 1973, a total of 187 persons on death row in the United States have been exonerated. According to the Death Penalty Information Center, DNA evidence led to at least 29 of those death row exonerations.
- Convicted, indigent persons are entitled to free legal counsel for their initial appeal as well as a free copy of their trial transcript. However, the Supreme Court later held that incarcerated persons are not entitled to free legal counsel for subsequent “discretionary” appeals.

KEY TERMS

Capital punishment (p. 268)	Rehabilitation (p. 252)
Deterrence (p. 252)	Retribution (p. 252)
Exoneration (p. 273)	Sentencing guidelines (p. 261)
Incapacitation (p. 252)	Victim impact statements (p. 265)
Punishment (and its purposes) (p. 252)	

REVIEW QUESTIONS

1. How would you describe the four goals of punishment? Which one of them do you believe works the best? Which goal or function is now predominant in our society?
2. What are the factors that influence the degree—and harshness—of the punishment that a convicted person will receive?
3. How would you delineate the different philosophies regarding crime and punishment that evolved from the colonial era to today? How did prison construction change in accordance with those changes in punishment models?
4. What forms of punishment used around the world would you point to that are clearly excessive in terms of the offenses committed? Explain your answer.
5. What are the differences between, and purposes of, both determinate and indeterminate sentences? Which is likely used when the crime control model or due process model is more predominant in a community?
6. How would you explain the rationale for, and operation of, the federal sentencing guidelines?
7. What is the legal basis for victim impact statements? How do such statements work, and for what purpose?
8. What are the fundamental arguments for and against capital punishment? What did the Supreme Court say about capital punishment in *Furman* and *Gregg*?
9. What are the prevailing methods of execution in use today?
10. What changes have been brought by DNA regarding the death penalty?
11. What are examples of both aggravating and mitigating circumstances, and how do they apply to sentencing decisions? To the death penalty?
12. What rights are possessed by a convicted person regarding access to legal counsel, trial transcripts, and law libraries?

LEARN BY DOING

1. The current presidential administration wants to reform our criminal justice system. A group of college students are asked to submit “fresh ideas” to help reshape the way we administer punishment in the United States. Using the four goals of punishment learned in this chapter, prepare a presentation to explain your ideas concerning which goal should be emphasized over all others and what changes should be made to help our system best achieve this goal.
2. Your state’s governor is considering a moratorium on all executions because of DNA and death row exonerations. Knowing you are a criminal justice student, you are asked by a state senator to prepare a pro–con paper concerning the benefits and issues involved with doing so, and of DNA in general. How would you respond? Include in your response an assessment of the deterrent effects of capital punishment laws.

3. Assume your criminal justice professor has assigned you to read a journal article by Landy and Aronson titled “The Influence of the Character of the Criminal and His Victim on the Decisions of Simulated Jurors,” published in 1969 in the *Journal of Experimental Social Psychology*, 5(2), pages 141–152. You find the article at <https://www4.uwsp.edu/psych/s/389/landy69.pdf>. Read Experiment II, including the instructions and case study (involving an incident with both an attractive victim and an unattractive victim) as given to university sophomores, as well as the experiment’s results and discussion, on pages 146–151. Summarize and explain the above in written form.
4. Your criminal justice class is to debate the following: “RESOLVED: Deterrence is lost for the general public when an inmate remains on death row a dozen or more years.” Plan how you would respond on both the pro and con sides of the debate.

CORRECTIONS

PART IV

Chapter 12	Prisons and Jails: Structure and Function	281
Chapter 13	The World Behind Bars: The “Keepers” and the “Kept”	307
Chapter 14	Corrections in the Community: Probation, Parole, and Other Alternatives to Incarceration	331

This part includes three chapters and examines many aspects of correctional organizations and operations.

Chapter 12 examines federal and state prisons and local jails in terms of their organization, structure, function, population trends and classification of those incarcerated, preparation for infectious diseases, and some technologies to help with contraband and people who are incarcerated.

Chapter 13 considers the “lives inside the walls” of both correctional personnel and those who are incarcerated; included are selected court decisions concerning the legal rights of incarcerated persons; administrative challenges with overseeing executions, litigation by those who are incarcerated, drugs, and members of gangs; and the work of personnel in local jails.

Chapter 14 reviews community corrections and alternatives to incarceration: probation, parole, and several other diversionary approaches. Included are discussions of the origins of probation and parole, functions of probation and parole officers, and several intermediate sanctions (e.g., house arrest, electronic monitoring).



©istockphoto.com/josefkubes

12

PRISONS AND JAILS

Structure and Function

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 12.1** Compare and contrast jails and prisons.
- 12.2** Describe correctional organizations by institutional types, general mission, and the classification of the populations within each.
- 12.3** Explain the basic structure and function of state prisons.
- 12.4** Explain the basic structure and function of federal prisons.
- 12.5** Describe how supermax prisons function, how they differ from other prisons, and findings concerning their effects on incarcerated persons and constitutionality.
- 12.6** Discuss the operation of private, for-profit prisons.
- 12.7** State how local jails are organized and constructed, including the new generation jail.
- 12.8** Identify some of the technologies now in use by incarcerated persons (as contraband) and by staff for monitoring the movements of incarcerated persons.

ASSESS YOUR AWARENESS

Test your basic knowledge of prisons and jails by responding to the following seven true–false items; check your answers after reading this chapter.

1. Factors influencing declines in prison and jail populations include enacting more lenient prosecution and sentencing policies, new and expanded substance abuse treatment programs, specialty courts, and greater use of alternatives to incarceration.
2. A person who is convicted of committing a murder will likely be forced to serve a lengthy sentence in a local jail.
3. The general mission of correctional institutions is to securely hold criminals while providing them with opportunities to become productive and law-abiding members of the community.
4. There are basically two custody levels of prisons: maximum and minimum.
5. Supermax prisons are so named because they offer the maximum amount of freedom and programming permitted by the courts.
6. Today, very few persons in prison, and no persons in jail, are involved in productive work or treatment programs.
7. Owing to the latest technologies for detection and apprehension, incarcerated persons' use of drones and cell phones has been eradicated.

Answers can be found on page 401.

A 61-year-old Black man was recently released from a life sentence by a parole board in Louisiana for stealing hedge clippers nearly a quarter century earlier after being deemed a habitual offender—though his only prior conviction? A robbery, 18 years earlier, at age 20. Only 3 months prior to his release, the state supreme court had declined to review his sentence.¹

Such case studies, when brought to the public's attention, prompt many Americans to question its criminal justice system—here, the courts and corrections subsystems in particular—and probably liken such treatment to that of some of the more infamous justice systems in Russia or China.

As a result, today there is a pervasive push for prison and jail reform. Both the United Nations (UN) and the U.S. Congress are involved in a growing movement to reform the manner in which our correctional institutions function in general, and—looking at the effects of incarceration on human rights—society in general (and persons living in poverty, in particular), the personal health of incarcerated persons, and governmental budgets. The UN Office on Drugs and Crime has delineated four specific “areas of work”:

- Pretrial detention (e.g., Is it overused? Are detainees being abused?)
- Prison management (Is it in line with the rule of law with respect to individuals’ human rights? Is imprisonment being used to prepare individuals for life outside prison following release?)
- Alternative measures and sanctions (Can more community-based sanctions be used?)
- Social reintegration (Are noncustodial sanctions—instead of isolation from society—and purposeful activities and programs in prisons being considered and employed?)

Of course, the provision of adequate health care for persons in detention cuts across all of these four domains.²

As you read this chapter, consider if or where prison reform might or should be undertaken, as well as where more human and financial resources might be needed to bring about those reforms.

INTRODUCTION

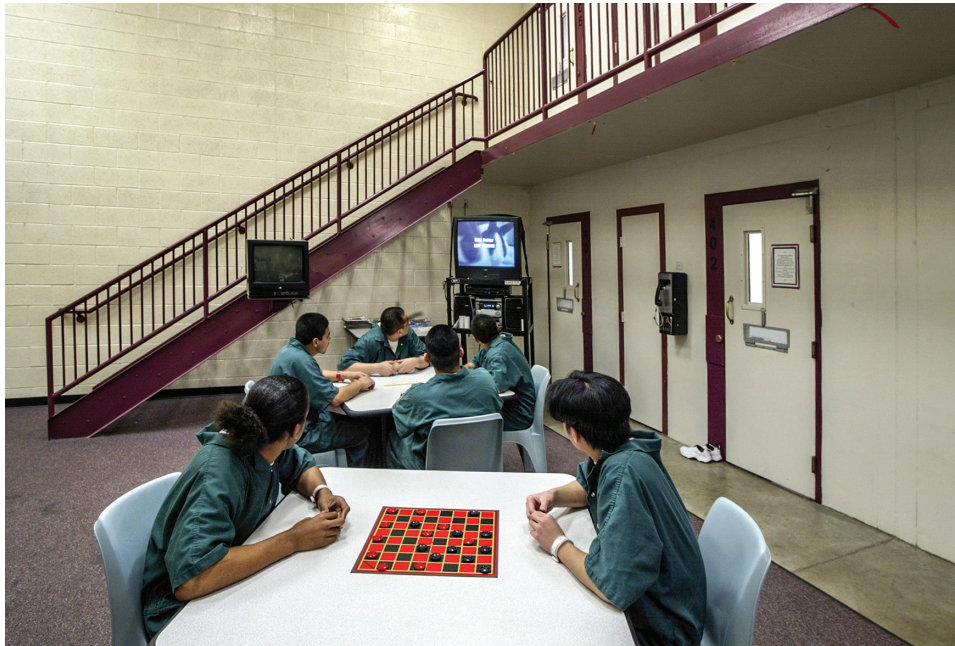
What are the differences in definitions, missions, structures, and functions of prisons and jails, and in the duties of persons working in them? How are decisions made concerning the type of institution to which one is sent? Are more people incarcerated when the economy takes a downturn? These are valid questions to ask, particularly given the expense associated with institutionalizing persons involved in the criminal justice system rather than having them remain in the community.

In his classic 1961 book *Asylums*, Erving Goffman described life inside what he termed “total institutions,” or those places “organized to protect the community against what are felt to be intentional dangers to it: jail, penitentiaries, POW camps, and concentration camps.”³ Goffman said that total institutions share the following features:

- All aspects of life are conducted in the same place and under the same single authority.
- Each phase of the member’s daily activity is carried on in the immediate company of a large batch of others.
- All phases of the day’s activities are tightly scheduled.
- The various enforced activities are brought together in a single rational plan . . . to fulfill the official aims of the institution.⁴

Goffman appears to have captured the essence of our correctional organizations, which are typically viewed as the end result of one’s movement through the criminal justice system (as described and illustrated in an earlier chapter). However, it might well be argued that the correctional process begins at the point of one’s *arrest*, when the individual is incarcerated in jail awaiting trial and official attempts are initiated to identify and change his or her criminal tendencies.

In any case, the field of corrections comprises agencies and programs that are responsible for carrying out the sentences and punishment that the courts have administered to those who have been accused, tried, and convicted for their criminal acts. Keep in mind that most of the work of corrections is accomplished not by locking people away but, rather, in the community, where offenders serve terms of probation or parole (discussed in a later chapter).



Inmates watch television in the recreational area of a county jail. Jails differ from prisons in that they are typically used as a short-term, temporary holding facility for persons recently arrested and awaiting trial.

Spencer Grant /Alamy Stock Photo

Unfortunately, most of what the public “knows” about prisons and jails is probably based on Hollywood’s stylized (and often very unrealistic) portrayal in movies such as *The Shawshank Redemption*, *The Green Mile*, *Escape From Alcatraz*, *Cool Hand Luke*, *The Longest Yard*, and *The Great Escape*. These and other such portrayals of prison and jail life typically show the administrators and their staff being cruel, bigoted, corrupt, and morally base.

One truth, however, is that, for many members of the prison population, incarceration is anything but punishing and instead offers them an overall improvement in lifestyle and conditions. This chapter addresses that observation.

This chapter first distinguishes between the functions of jails and prisons, including their employment and costs. Then our focus shifts to correctional agencies as organizations, including their mission and purposes of classification systems of incarcerated persons. Next are discussions of state prison organization, the federal prison system, supermax prisons, and privately operated prisons. Then we shift our attention to local jails, to include their organization, types, and programs. Finally, we consider some of the good and bad uses of technologies as they concern correctional institutions, the latter of which includes use of drones and cell phones by incarcerated persons.

CORRECTIONAL FACILITIES AS ORGANIZATIONS

Like police and courts organizations, the correctional component of the U.S. criminal justice system also represents organizations—agencies composed of elements that are made up of collective functions and that contribute to their overall mission.

Distinguishing Jails and Prisons

The words “jail” and “prison” are often used interchangeably—and erroneously, as there are major differences between the two. The major differences between whether someone is sentenced to jail or prison concern the nature of the crime and the length of the sentence to be served. A **jail** is a short-term, often temporary holding facility for persons recently arrested and awaiting trial and who often are unable to pay bond or bail for their release; or they might be serving short sentences for misdemeanors, generally 1-year’s duration or less.

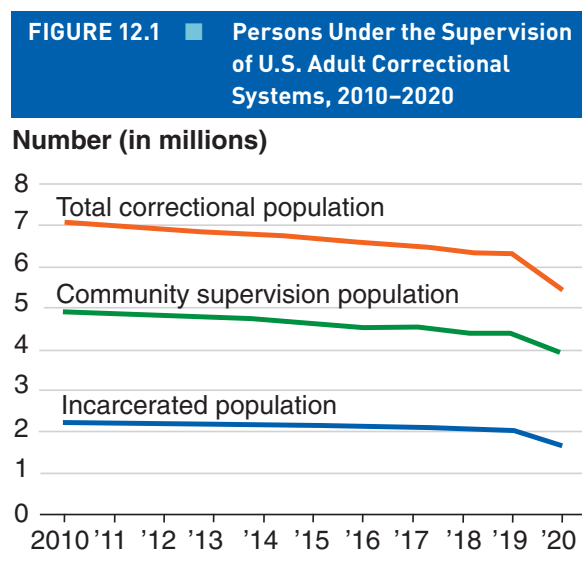
Conversely, **prisons** are designed for longer confinement. The majority of persons convicted of felonies serve their sentences in a prison. People convicted of committing federal crimes are typically sentenced to federal prisons, and those who break state laws go to state prisons.

Another important distinction concerns who administers the facility. Jails are generally run by a county sheriff's office, whereas prisons are operated by state or federal governments.⁵

Incarcerated Persons, Employment, and Expenditures

As shown in Figure 12.1, a little more than 5.5 million Americans are under some form of correctional supervision, with about 3.9 million on some form of community supervision and about 1.7 million in state or federal prison or local jails.⁶ Though seemingly high, these figures actually mark a 19-year low for persons under some form of correctional supervision.⁷ Furthermore, prisons hold about 2,500 persons on death rows in the jurisdictions allowing capital punishment (29 states, the District of Columbia, the U.S. military, and the federal government).⁸

Means of addressing the effects of COVID-19 on prison and local jail populations are discussed more at chapter's end.



Sources: Bureau of Justice Statistics, *Annual Probation Survey*, *Annual Parole Survey*, *National Prisoner Statistics Program*, 2010–2020; *Annual Survey of Jails*, 2010–2018 and 2020; and *Census of Jails*, 2019.

State, county, and municipal governments combined spend more than \$80 billion per year on correctional institutions, while the federal prison system costs about \$7.1 billion for about 180,000 incarcerated persons and persons awaiting trial or sentencing.⁹ The Bureau of Labor Statistics estimates that about 437,000 individuals in the United States are employed as correctional officers.¹⁰

A Note on Correctional Populations and COVID-19

Prison and jail incarceration rates have generally fallen slightly each year since 2008 for several reasons: sharp declines in violent and property crime rates; in 2015, the federal prison system began releasing thousands of nonviolent persons convicted of drug offenses; and a number of states began seeking to save high costs of incarceration by enacting more lenient prosecution and sentencing policies, as well as new and expanded substance abuse treatment programs, specialty courts, and reentry programs aimed at reducing recidivism.¹¹ Recently, however, the Vera Institute of Justice found that while overall U.S. jail and prison populations continued to decline in the first half of 2020, jail populations began to rebound in the second half while the decline in state prison populations continued (albeit more slowly). These dramatic and historic changes in U.S. incarceration were triggered largely by the COVID-19 pandemic and came during a national wave of Black Lives Matter demonstrations.¹² It remains to be seen how these populations will fare in the future as variant strains of COVID-19 spread across the United States.

A “Prescription” for Coping With Infectious Diseases

As the COVID-19 pandemic unfolded, it soon became clear that corrections facilities would be hard-pressed to cope with the disease (New York City’s Rikers Island, for example, had more than 4,000 incarcerated persons and 1,400 staff catch the disease). Given that outbreaks of tuberculosis, hepatitis, AIDS, and other infectious diseases can also occur in prisons and jails—where incarcerated persons have compromised health, lack of access to health care, close physical contact with others (militating against social distancing), and the virtual impossibility of repeated cleaning of surfaces to maintain sanitation—it is imperative that criminal justice practitioners be prepared to take urgent measures to limit transmission of such diseases. In addition to proper monitoring, screening, and testing of incarcerated persons, Human Rights Watch has recommended a “baseline standard” for such outbreaks, including the following considerations:

- An early release program for people who are close to the end of their sentence
- Release of all people held on technical (not a new crime) violations of probation or parole
- Release of all persons being held pretrial
- Identify and protect persons who are especially vulnerable to severe illness, including older or pregnant individuals, those with certain disabilities and underlying health conditions, and so on
- Release of all young people held in juvenile detention facilities who do not pose a risk to the community or themselves
- Avoid taking into custody persons who commit misdemeanors and low-level felonies that do not involve bodily injury or sexual assault¹³

THE CORRECTIONAL ORGANIZATION: TYPES, MISSION, AND CLASSIFICATION

Correctional organizations are complex, hybrid organizations that use two distinct yet related management subsystems to achieve their goals: One is concerned primarily with managing correctional employees, and the other is concerned primarily with delivering correctional services to a designated population of persons convicted of a criminal offense. The correctional organization, therefore, employs one group of people—correctional personnel—to work with and control another group: incarcerated persons.

General Mission and Features

The mission of correctional agencies has changed little over time. It is as follows: to protect the members of the community from crime by safely and securely handling persons convicted of criminal offense while providing incarcerated persons some opportunities for self-improvement and increasing the chance they will become productive and law-abiding members of the community.¹⁴ An interesting feature of the correctional organization is that *every* correctional employee who exercises legal authority over incarcerated persons is a supervisor, even if the person is the lowest-ranking member in the agency or institution. Another feature of the correctional organization is that—as with the police—everything a correctional supervisor does may have civil or criminal ramifications, both for themselves and for the agency or institution. Therefore, the legal and ethical responsibility for the correctional (and police) supervisor is greater than it is for supervisors in other types of organizations.

Finally, it is probably fair to say there are two different philosophies concerning what a correctional organization should be: (1) a custodial organization, which emphasizes the caretaker functions of controlling and observing incarcerated persons, and (2) a treatment organization, which emphasizes rehabilitation of incarcerated persons. These different philosophies contain potential conflict for correctional personnel.

Do Prisons Rehabilitate?

As discussed in an earlier chapter, the purposes of sentencing and punishment include rehabilitation—the goal of changing the person convicted of an offense so they become a law-abiding citizen. Can and do prisons really rehabilitate? The data on recidivism (from the Latin word *recidivus*, which means “recurring,” or convicted persons committing new crimes) will address the question. Recidivism is one of the most important concepts in criminal justice, as it concerns a person’s relapse into criminal behavior; recidivism is generally measured by one’s criminal acts resulting in rearrest, reconviction, or return to prison *within a 3-year period* after they were released from incarceration or placement on supervision for a previous criminal conviction.¹⁵

A study of incarcerated persons in state prisons by the Bureau of Justice Statistics looked at recidivism beyond the aforementioned 3-year threshold, with a 9-year follow-up of incarcerated persons in state prisons; the study provides a dismal view of rearrest after release. In sum, five in six (83%) of incarcerated persons who were released from state prisons committed a new offense for which they were rearrested. An estimated 68% were rearrested within 3 years; over the 9-year period, 82% of those persons arrested during the first 3 years were arrested during years four through nine, and almost half (47%) of those who did not have an arrest within 3 years were arrested during years four through nine.¹⁶ Clearly, the longer one has been released from prison, the greater the likelihood of reoffending. More needs to be done to prepare incarcerated persons for reentry, providing educational opportunities, job training and counseling, and outreach and support services post-release.¹⁷

Punishment for Some, a “Step Up” for Others

Most Americans probably assume sending persons convicted of a crime to prisons and jails—depriving them of their freedom of movement and many amenities while living under an oppressive set of rules—serves a useful purpose, will bring them to the “good life,” and instills in them a desire to obey the laws and avoid returning to prison after their release. In fact, experts have said that such punishments will work only under the following two conditions: (1) if they injure the convicted person’s “social standing by the punishment,” and (2) if they make “the individual feel a danger of being excluded from the group.”¹⁸

Unfortunately, however, this view overlooks two very important facts—facts that are perhaps a sad commentary on the kinds of lives being led by many people in the United States:

- Most people convicted of serious offenses neither accept nor abide by those two conditions.
- Most incarcerated people today come from communities where conditions fall far below the living standards that most Americans would accept.¹⁹ As stated by prison expert Joan Petersilia, the grim fact and national shame is that for many people who go to prison, the conditions inside are not all that different from (and might even be better than) the conditions outside.²⁰ For some members of our society, going to prison or jail—and obtaining “three hot meals and a cot” (three meals and a bed)—may actually represent an *increased* standard of living. Obviously, for those individuals the threat of imprisonment no longer represents a horrible punishment and therefore has lost much of its deterrent power. When such people go to prison, they seldom feel isolated but are likely to find friends, if not family, already there.²¹

Furthermore, it appears that prison life is not perceived as being as difficult as it once was. Incarcerated person’s actions speak loudly in this respect: About two thirds of today’s individuals on parole are rearrested within 5 years; evidently, they believe the “benefits” of committing a new crime outweigh the costs of being in prison.²² Finally, the stigma of having a prison record is not the same as in the past because so many of the person’s convicted peers and family members also have done time. Imprisonment also confers status in some neighborhoods. To many people, serving a prison term is a badge of courage. It also is their source of food, clothing, and shelter.²³ Any discussion of jails and prisons should be prefaced with these facts concerning the world of incarcerated persons.

PRACTITIONER'S PERSPECTIVE

JAIL ADMINISTRATOR



Name: Mitch Lucas

Position: Jail Administrator

Location: Charleston, South Carolina

What is your career story? I came to the Charleston County Sheriff's Office to be the public information officer (PIO). In my role as PIO, I had to deal with the folks at the jail, and I was absolutely astonished at how motivated and dedicated people could be in a very important role like that, but nobody outside the jail knew what they did. Most people have no idea what goes on in a jail—they only know what they see in the media. And the people at the jail were just so incredible when it came to helping me in my job and doing theirs. I told the sheriff that if I ever had the opportunity, I'd like to work at the jail in some capacity. A few years later, he made me the jail administrator. I served as the jail administrator for 7.5 years, absolutely the best job I ever had, mainly because of the people—both inside the jail and outside in the field—with whom I worked.

What are some challenges and misconceptions you face in this position? The biggest paradigm shift I had to make when I became the jail administrator was to realize that the jail is the common denominator of the criminal justice system. Everyone who is arrested, goes to court, whoever is indicted and ends up going to prison, all pass through the jail. The jail's main purpose is to maintain behavior of the incarcerated person and keep the community safe by keeping the jail running smoothly and keeping the people who are in the jail safe. That was a bit of a shift for me. Because you have to sort of remove yourself from whether they're guilty or not guilty and just deal with the situation at hand, and that's providing an environment that is safe for everyone.

There are two valleys of misconception. One is from law enforcement. Law enforcement officers believe people work in jails because they can't be cops. I felt the same way at one point, but when I got to meet jail workers and work with them, I realized that's not the case. The other misconception comes from the media. All other public safety aspects—law enforcement, firefighters, dispatchers—all of them are portrayed as heroes in most of the stories. But the corrections officer, whether it's at a jail or in prison, is typically portrayed as cruel and vicious.

What characteristics and skills are most helpful to succeed in this position? There are two really important skills to be successful in law enforcement corrections. First are communication skills. The person should be able to communicate in a variety of ways, and they must be able to listen, analyze information, and act on it. The other one is writing. Probably the number-one problem in

all areas for criminal justice is poor report writing. You have to be able to write effectively, and I encourage anybody that talks to me about getting into law enforcement corrections to take as many English and public-speaking courses as they can.

Do you see any common trends in this position? We're seeing more and more that education plays a greater role because of everything with the Freedom of Information Act. Everything that's done in the jail is no longer in a vacuum, at both the state and federal level. If a reporter or family member asks to see a video of a particular incarcerated person or particular situation, they can get it. So the field is no longer just what we used to call a lockup, where you put someone in a cell, lock the door, and walk away.

Classification of Incarcerated Persons: A Cornerstone of Corrections

If the prison or jail experience is to carry any benefit, classifying incarcerated persons into the proper levels of housing, programming, and other aspects of their incarceration must be accomplished so as to have an influence on their behavior, treatment, and progress while in custody—as well as for the general safety of incarcerated persons and staff. Correctional staff must make **classification** decisions in at least two areas: the incarcerated person's level of *physical restraint*, or “security level,” and the incarcerated person's level of supervision, or *custody grade*. These two concepts are not well understood and are often confused, but they significantly impact an incarcerated person's housing and program assignments,²⁴ as well as an institution's overall security level.

The most recent development in classification is unit management, in which a large prison population is subdivided into several mini-institutions analogous to a city and its neighborhoods. Each unit has specified decision-making authority and is run by a staff of six, whose offices are on the living unit; this enables classification decisions to be made by personnel who are in daily contact with the incarcerated persons and know them fairly well.²⁵ Robert Levinson delineated four categories into which correctional officials classify new incarcerated persons:²⁶

- *Security* needs are classified in terms of the number and types of architectural barriers that must be placed between the incarcerated persons and the outside world to ensure they will not escape and can be controlled. Most correctional systems have four security levels: supermax (highest), maximum (high), medium (low), and minimum (lowest).
- *Custody* assignments determine the level of supervision and types of privileges an incarcerated person will have. A basic consideration is whether or not an incarcerated person will be allowed to go outside the facility's secure perimeter, so some systems have adopted a fourfold array of custody grades—two inside the fence (one more restrictive than the other) and two outside the fence (one more closely supervised than the other).
- *Housing* needs were historically determined by an “assign to the next empty bed” system, which could place the new, weak incarcerated person in the same cell with the most hardened incarcerated person. A more sophisticated approach is known as internal classification, in which incarcerated persons are assigned to live with other incarcerated persons who are similar to themselves. This approach can involve the grouping of incarcerated persons into three broad categories: heavy—persons known to victimize others; light—persons prone to being victimized; and moderate—neither intimidated by the first group nor abusers of the second.
- *Program* classification involves using interview and testing data to determine where the newly arrived incarcerated individual should be placed in work, training, and treatment programs. These programs are designed to help the incarcerated person make a successful return to society.

In the past, most prison systems used a highly subjective system of classifying incarcerated persons that involved a review of records pertaining to their prior social and criminal history, test scores, school and work performance, and staff impressions developed from interviews. Today, however, administrators employ a much-preferred objective system that is more rational, efficient, and equitable. Factors

used in making classification decisions are measurable and valid and are applied to all incarcerated persons in the same way. Criteria most often used are escape history, any detainers (requests filed with the institution holding an incarcerated person asking that the jurisdiction hold them for that agency or notify the agency when their release is about to occur), prior commitments, criminal history, prior institutional adjustment, history of violence, and length of sentence.²⁷



Physical fitness and sports activities are popular among inmates, and jails and prisons at all levels typically offer a variety of such opportunities.

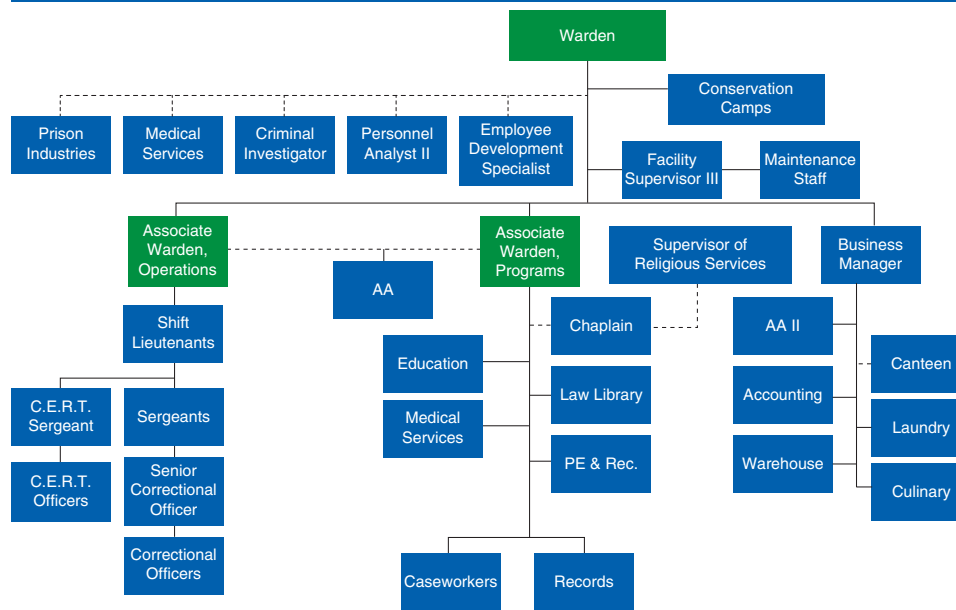
Justin Sullivan/Getty Images News/Getty Images

STATE PRISONS AS ORGANIZATIONS

As noted earlier in this chapter, the mission of most prisons is to provide a safe and secure environment for staff and incarcerated persons, as well as programs for people convicted of offenses that can assist them after release.²⁸ This section describes how **state prisons** are organized to accomplish this mission. First is a look at the larger picture—the typical organization of the central office within the state government that oversees *all* prisons within its jurisdiction—and then a look at the characteristic organization of an individual prison.

Prison organizational structures (Figure 12.2) have changed considerably over time. Until the beginning of the 20th century, prisons were administered by state boards of charities, boards composed of community members, boards of inspectors, state prison commissions, or individual prison keepers. Most prisons were individual provinces; wardens, who were given absolute control over their domain, were appointed by governors through a system of political patronage. Individuals were attracted to the position of **warden** because it carried many fringe benefits, such as a lavish residence, unlimited service from incarcerated persons (servants), food and supplies from institutional farms and warehouses, furnishings, and a personal automobile. Now most wardens or superintendents are civil service employees who have earned their position through seniority and merit.²⁹ We discuss the warden's position more later in this chapter.

Reporting to the warden are deputy or associate wardens, each of whom supervises a department within the prison. The deputy warden for operations will typically oversee correctional security, unit management, the disciplinary committee for incarcerated persons, and recreation. The deputy warden for special services will generally be responsible for the library, mental health services, drug and alcohol recovery services, education, prison job assignments, religious services, and prison industries. The deputy warden for administration will manage the business office, prison maintenance, laundry, food service, medical services, prison farms, and the issuance of clothing.³⁰

FIGURE 12.2 ■ Organizational Structure for a Medium-Security Prison

Note: AA = administrative aide; C.E.R.T. = correctional emergency response team; PE & Rec. = physical education and recreation.

We now discuss correctional security, unit management, education, and prison industries in greater detail:

- The correctional security department is usually the largest department in a prison, with 50% to 70% of all staff. It supervises all the security activities within a prison, including any special housing units, transportation of incarcerated persons, and the disciplinary process of incarcerated persons. Security staff wear military-style uniforms; a captain typically runs each 8-hour shift, lieutenants often are responsible for an area of the prison, and sergeants oversee the rank-and-file correctional staff.
- The unit management concept was originated by the federal prison system in the 1970s and now is used in nearly every state to control prisons by providing a “small, self-contained, living area for the incarcerated persons and staff office area that operates semi-autonomously within the larger institution.”³¹ The purpose of unit management is twofold: to decentralize the administration of the prison and to enhance communication among staff and between staff and incarcerated persons. Unit management breaks the prison into more manageable sections based on housing assignments; assignment of staff to a particular unit; and staff authority to make decisions, manage the unit, and deal directly with incarcerated persons. Units usually comprise 200 to 300 incarcerated persons; staff members are assigned to specific units, and their offices are in the housing area, making them more accessible to incarcerated persons and better able to monitor their activities and behavior. Directly reporting to the unit manager are “case managers,” or social workers, who develop the program of work and rehabilitation for each incarcerated person and write progress reports for parole authorities, classification, or transfer to another prison. Correctional counselors also work with incarcerated persons in the units on daily issues, such as finding a prison job, working with their prison finances, and creating a visiting and telephone list.³²
- Education departments operate the academic teaching, vocational training, library services, and sometimes recreation programs for incarcerated persons. An education department is managed in a fashion similar to that of a conventional elementary or high school, with certified teachers for all subjects that are required by the state department of education or are part of the General Educational Development (GED) test. Vocational training can include carpentry, landscaping or horticulture, food service, and office skills.

- **Prison industries** are legislatively chartered as separate government corporations and report directly to the warden because there is often a requirement that the industry be self-supporting or operate from funds generated from the sale of products. Generally, no tax dollars are used to run the programs, and there is strict accountability of funds.



Prison housing units vary, but they usually consist of 200 to 300 incarcerated persons and place staff members in the housing area to be more accessible to incarcerated persons and better able to monitor their activities and behavior.

ROBYN BECK/AFP/Getty Images

FEDERAL PRISONS AS ORGANIZATIONS

The Federal Bureau of Prisons (BOP) was established in 1930 to provide care for person incarcerated in federal prisons. Today, the BOP has more than 36,000 employees and consists of 144 institutions of many types (including prisons, camps, medical centers, penitentiaries, transfer centers, and detention centers) and nearly 155,000 incarcerated persons in federal facilities.³³ Approximately 85% of these incarcerated persons are confined in BOP-operated facilities, while the remainder are confined in privately managed or community-based facilities and local jails.³⁴

Prison Types and General Information

The BOP operates institutions at five different security levels in order to confine incarcerated persons in an appropriate manner.³⁵ The levels (and associated numbers of institutions) are discussed in the sections that follow; the federal supermax facility is discussed later in this chapter. Security levels are based on such features as the presence of external patrols, towers, security barriers, or detection devices; the type of housing within the institution; internal security features; and the ratio of staff to incarcerated person.

Minimum Security (7)

Minimum-security institutions, also known as federal prison camps, have dormitory housing, a relatively low ratio of staff to incarcerated person, and limited or no perimeter fencing. These institutions are work and program oriented, and many are located adjacent to larger institutions or on military bases, where incarcerated persons help serve the labor needs of the larger institution or base.

Low Security (36)

Low-security federal correctional institutions have double-fenced perimeters, mostly dormitory or cubicle housing, and strong work and program components. The ratio of staff to incarcerated person in these institutions is higher than in minimum-security facilities.

Medium Security (48)

Medium-security correctional institutions and penitentiaries designated to house medium-security incarcerated persons have strengthened perimeters (often double fences with electronic detection systems), mostly cell-type housing, a wide variety of work and treatment programs, an even higher ratio of staff to incarcerated person than low-security federal correctional institutions, and even greater internal controls.

High Security (17)

High-security institutions, also known as U.S. penitentiaries, have highly secured perimeters (featuring walls or reinforced fences), multiple- and single-occupant cell housing, the highest ratio of staff to incarcerated person, and close control of the movements of incarcerated persons.

Administrative Security (20)

These are institutions with special missions, such as the detention of convicted persons pretrial; the treatment of incarcerated persons with serious or chronic medical problems; or the containment of the incarcerated persons who are extremely dangerous, violent, or escape-prone (such as in the supermax prison in Florence, Colorado).

In addition, a number of BOP institutions have a small, minimum-security camp adjacent to the main facility. These camps, often referred to as satellite camps, provide labor by incarcerated persons to the main institution and to off-site work programs.

A Career With BOP

The general schedule that is used for BOP position classification and pay has 15 grades—GS-1 (lowest) to GS-15 (highest). Agencies establish (classify) the grade of each position based on the level of difficulty, responsibility, and qualifications required. For example, individuals with a high school diploma and no additional experience typically qualify for GS-2 positions; those with a bachelor's degree, for GS-5 positions; and those with a master's degree, for GS-9 positions. Individuals who wish to investigate career opportunities with the BOP should visit the following websites:

1. Pay classification system: <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/>
2. The hiring process: https://www.bop.gov/jobs/hiring_process.jsp
3. The correctional officer position: <https://www.bop.gov/jobs/positions/index.jsp?p=Correctional%20Officer>
4. Job benefits, which are exceptional: https://www.bop.gov/jobs/life_at_the_bop.jsp

The First Step Act and Federal Prisons

In December 2018, President Trump signed into law the First Step Act,³⁶ which seeks to improve criminal justice outcomes and to reduce the size of the federal prison population. Specifically, the Act requires the following:

- The U.S. Attorney General to develop a risk and needs assessment to be used to assess the recidivism risk and needs of all persons incarcerated in federal prisons and that incarcerated persons be placed in recidivism reducing programs and productive activities.
- The BOP to assist incarcerated persons in applying for federal and state benefits as well as acquire a social security card, drivers' license, and birth certificate as needed.
- Persons incarcerated in federal prisons be allowed to earn up to 54 days of good-time credits for every year of their imposed sentence (e.g., one who is sentenced to 10 years will earn 540 days of credit).

- Persons incarcerated in federal prisons be housed as close to their primary residence as possible.
- The BOP to place certain elderly and terminally ill incarcerated persons on home confinement to serve out their sentences.
- Certain forms of restraint will be prohibited, such as restraints on incarcerated persons who are pregnant, and tampons and sanitary napkins will be provided for free.
- The BOP staff be trained on how to de-escalate encounters and respond to incidents involving incarcerated persons with mental illness.
- There will be no use of solitary confinement for juvenile delinquents in federal custody.³⁷

Perhaps related to the Act and/or other factors, the federal prison population had already begun to decline in 2017, Trump's first year in office, and continued through 2019 for an overall decline of 5% (or a reduction of 7,600 incarcerated persons). The federal prison population under Trump actually continued a decline that began under President Obama (also 5%), which had not occurred for several decades. More recently, President Biden made a campaign promise to reduce prison populations, but as of mid-2022, some organizations and individuals were questioning when that would happen. Still, U.S. presidents do affect criminal justice policies.³⁸

Community Corrections in the Federal System

Parole was abolished in the federal prison system in 1987, when the federal sentencing guidelines went into effect. Since then, incarcerated persons can have no more than 54 days a year subtracted from a federal sentence, commencing after the person has served 12 months; this policy was upheld in 2010 by the U.S. Supreme Court.³⁹ Nonetheless, the BOP is actively supporting and using community-corrections techniques.

SUPERMAX PRISONS

Super-maximum—or “supermax”—prisons represent the most secure form of incarceration now in existence in the United States and abroad (although they are given different names in other countries). They began to proliferate in the United States in the mid-1980s as a means of holding incarcerated persons who were extremely disruptive or violent. Such prisons have not been without controversy, however, and this section includes a brief history and description, some research findings on effects on incarcerated persons, and some constitutional questions that have been raised.

Origin

Supermax prisons exist in both state and federal prison systems and effectively originated in 1983 in Marion, Illinois, when two correctional officers were murdered by incarcerated persons on the same day and the warden put the prison in “permanent lockdown.” Thus began 23-hour-a-day cell isolation and no communal yard time for incarcerated persons, who were also not permitted to work, attend educational programs, or eat in a cafeteria.⁴⁰

According to Amnesty International, today at least 40 states operate supermax prisons in the United States and house about 25,000 incarcerated persons.⁴¹ To understand what supermax prisons are and how they operate, one can look at the federal “administrative maximum” prison, or ADX, located in Florence, Colorado, 90 miles south of Denver.

ADX is the only federal supermax facility in the country (the others are state prisons). It is home to a “who’s who” of criminals: Boston Marathon bomber Dzhokhar Tsarnaev, “Unabomber” Ted Kaczynski; “Shoe Bomber” Richard Reid; Ramzi Yousef, who plotted the 1993 World Trade Center attack; Oklahoma City bomber Terry Nichols; Olympic Park bomber Eric Rudolph; and Mexican drug lord Joaquin “El Chapo” Guzman. Ninety-five percent of the incarcerated persons at ADX, known as the “Alcatraz of the Rockies,” are the most violent, disruptive, and escape-prone persons housed from other federal prisons.⁴²



The “administrative maximum” prison, or ADX, located in Florence, Colorado, is the only federal supermax in the nation.

©Lizzie Himmel/Sygma/Getty Images

Two Key Components: Operation and Design

Upon viewing its external aspect for the first time, one immediately sees this is not the usual prison, as large cables are strung above the basketball courts and track—they are helicopter deterrents.⁴³ Incarcerated persons in a supermax rarely leave their cells; in most such prisons, an hour a day of out-of-cell time is the norm. Incarcerated persons eat all of their meals alone in the cells, and typically no group or social activity of any kind is permitted. They are also typically denied access to vocational or educational training programs. Incarcerated persons can exist for many years separated from the natural world around them.⁴⁴

Effects on Incarcerated Persons

Given the high degree of isolation and lack of activities in supermax prisons, a major concern voiced by critics of these facilities is their “social pathology” and potential effect on incarcerated persons’ mental health. Although there is very little research to date concerning the effects of supermax confinement,⁴⁵ some authors point to previous isolation research that shows greater levels of deprivation lead to psychological, emotional, and physical problems. For example, studies show that as incarcerated persons face greater restrictions and social deprivations, their levels of social withdrawal increase; limiting human contact, autonomy, goods, or services is detrimental to incarcerated persons’ health and rehabilitative prognoses and tends to result in depression, hostility, severe anger, sleep disturbances, and anxiety. Women living in high-security units have been found to experience claustrophobia, chronic rage reactions, depression, hallucinatory symptoms, withdrawal, and apathy.⁴⁶

Some researchers argue that supermax facilities are not effective management tools for controlling violence and disturbances within prisons, nor are they effective in reducing violence or disturbances within the general population; they conclude that supermax prisons should not be used for their current purpose.⁴⁷

Constitutionality

Because of the relatively recent origin of supermax prisons, their constitutionality has been tested in only a few cases. The first, *Madrid v. Gomez* (1995), addressed conditions of confinement in California’s

Pelican Bay Security Housing Unit.⁴⁸ The judge observed that its image was “hauntingly similar to that of caged felines pacing in a zoo”; however, the judge concluded that he lacked any constitutional basis to close the prison. In the most recent case, *Jones-El v. Berge* (2004), a federal district court in Wisconsin concluded “extremely isolating conditions . . . cause SHU [Security Housing Unit] syndrome in relatively healthy prisoners. . . . Supermax is not appropriate for seriously mentally ill inmates.”⁴⁹ The judge ordered several incarcerated persons to be removed from the supermax facility.

Going Global 12.1

Some of the World's Worst Prisons

Now that the U.S. military has withdrawn from Afghanistan—ending a 20-year war—and the Taliban have taken control, prison for people suspected of being a former soldier or government worker might be a ruined house, a cave, a filthy basement in an abandoned dwelling, or a village mosque. Beatings or worse are typically administered, food is stale bread and cold beans at best, and a bed is the floor or a dirty carpet. The threat of death is ever-present as the people detained are locked up in these hidden makeshift prisons—often moved day to day, from ruined house to isolated mosque, and back again—without any sense of how long their detention will last.⁵⁰

This scenario may appear to be as bad as any prison system can get, but one can be just as bad or worse, as seen below:

- *La Santé, France*: This institution, the last remaining prison in Paris, was established in 1867. Its mattresses are infested with lice; because incarcerated persons can take only two cold showers per week, skin diseases are common. Overcrowded cells, infestation of vermin, and rape are also common. Its rate of suicide attempts each year is estimated to be almost 5 times higher than that of California's prison system. Its conditions have been condemned by the UN Human Rights Committee and the country's own minister of justice.
- *Black Beach, Equatorial Guinea*: Amnesty International has described life in this prison as a slow, lingering death sentence. Torture, burning, beatings, and rape are systematic and brutal. Because food rations are minimal, with incarcerated persons sometimes going up to 6 days without food, starving to death is common. Amnesty also reports that incarcerated persons are routinely denied access to medical treatment.
- *Vladimir Central Prison, Russia*: Constructed by Catherine the Great to house persons convicted of political crimes, this prison during the Soviet era became synonymous with persecution of political dissidents. Today, the prison also functions as a museum for the public. Visitors are not allowed into the penitentiary, where cells often contain six incarcerated persons and reports of abuse by guards are common. HIV and tuberculosis are also rampant.
- *The North Korean Gulag*: Up to 200,000 incarcerated persons are held in these detention centers, and one houses more than 50,000 incarcerated persons. Entire families and even neighborhoods are sent here as punishment for the infraction of one member. In some camps, up to 25% of incarcerated persons die every year, only to be replaced by new incarcerated persons. Most of the camps are located along the North Korean border with China and Russia; thus, incarcerated persons are forced to endure harsh weather conditions as well as inhumane treatment.⁵¹
- *Turkey's Diyarbakir Prison*: Originally constructed to hold 744 incarcerated persons, this facility has had as many as 942 crowded into it at a time. Common tortures have included beatings and sexual assaults, and incarcerated persons have been subjected to sensory deprivation, hung by the arms, electrocuted, and more. Hundreds have died while incarcerated in Diyarbakir due to hunger strikes, beatings, self-immolation by fire, and “mysterious” deaths during interrogations.⁵²

Contrast the facilities described in Going Global 12.1 with the following description of one prison in Norway, which has long been held as a model in terms of the prison ideal:

Modern, cheerful, quiet and peaceful, Halden Prison in Norway is known as one of the most humane prisons in the world. The sole goal of Halden is rehabilitation; no expense is spared

to create a beautiful and inspiring atmosphere, bright and airy cells with enclosed ensuites, bar-free windows, excellent workout facilities, a peaceful treed yard with cheeseboards and benches, and other such niceties. The prison guards are trained to motivate, not intimidate inmates, and robust vocational programming, on-site medical and paramedical facilities keep the prisoner's bodies and minds in good working order.⁵³

PRIVATE PRISONS

Perhaps one of the most rapidly growing segments of corrections has been the outsourcing or **privatization** of prisons, a term that includes either the operation of existing prison facilities by a private company or the building and operation of a new prison by a for-profit company. Although the number is declining, at mid-2021 about 8% of total incarcerated persons within state and federal prisons (115,000) were in privately operated facilities in 30 states. This number included the 40,000 persons held in immigrant detention.⁵⁴ The two largest private prison companies are CoreCivic (formerly the Corrections Corporation of America, or CCA) and the Geo Group, which together have annual revenues of more than \$1 billion.⁵⁵

Historically, strong arguments have been made, both pro and con, regarding the privatization of prisons. Proponents of the concept argue that private prisons provide an effective, cost-saving alternative for governments seeking to address significant capacity needs while taking pressure off corrections budgets. Opponents maintain there is no guarantee that standards will be upheld, no one will maintain security if employees go on strike, there will be different disciplinary procedures for incarcerated persons, the company will be able to refuse certain incarcerated persons or could go bankrupt, and the company can increase its fees to the state.⁵⁶

A legitimate question is this: Which is better—public or private prisons? The totality of both types of prisons has not often been studied, and it is known that custody level, size, crowding, age, and architecture can all have a strong influence on measures of quality. One comprehensive study, however, examined 1,129 institutions—105 of which were private. Only one significant difference was found: State prisons were much more likely than private prisons to be under a court order for the conditions of confinement. Given the negative effects of crowding, this is a significant finding.⁵⁷

Prior to the 2016 presidential election, the U.S. Department of Justice announced it would discontinue the use of private prisons in the federal system, affecting 13 federal prisons. However, the Trump administration reversed that policy in 2017 and eventually housed about 34,000 incarcerated persons in such facilities.⁵⁸ Then, in January 2021 President Biden, being opposed to privatization, signed an executive order eliminating such facilities at the federal level.⁵⁹

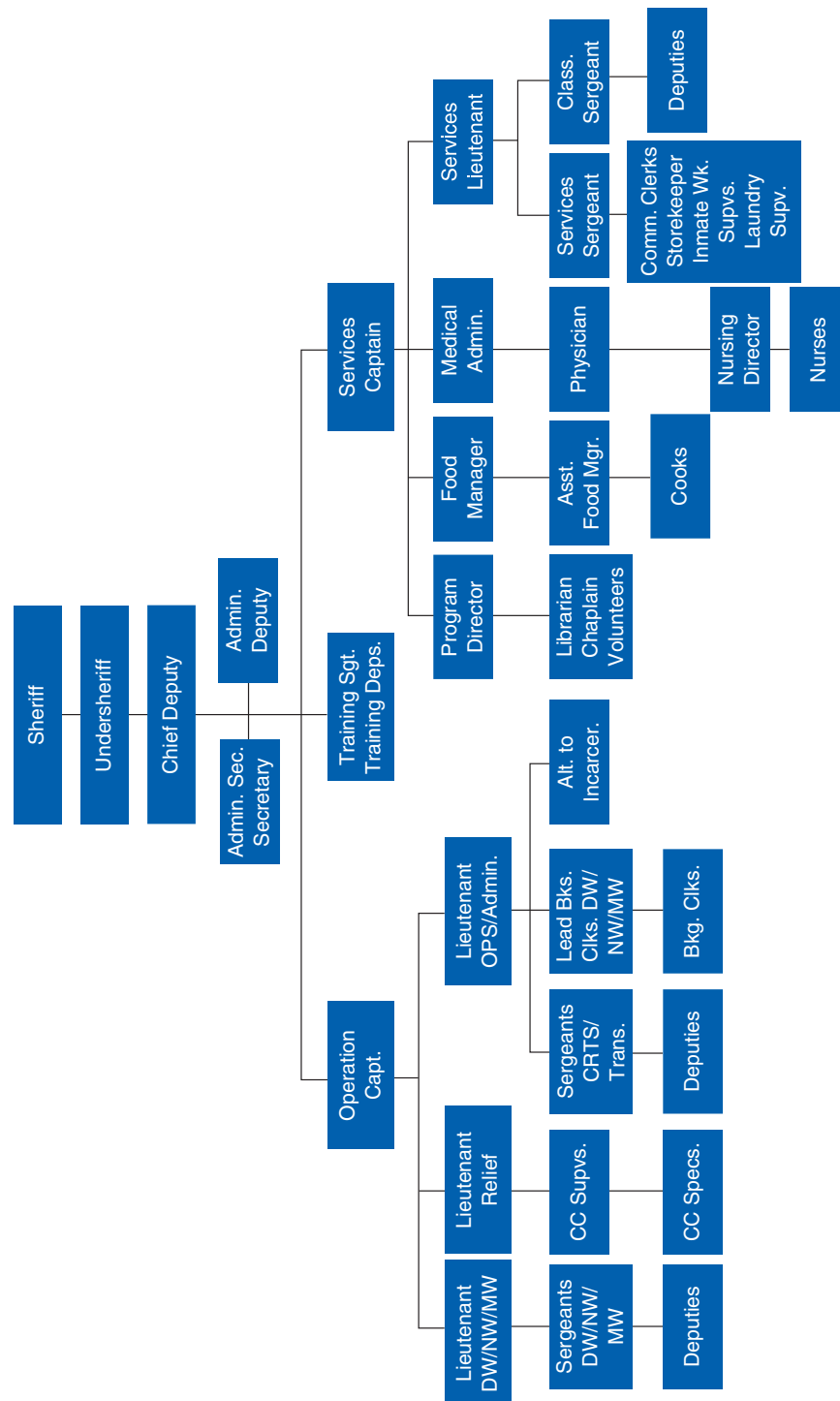
JAILS AS ORGANIZATIONS

Across the United States, approximately 3,283 jails are administered locally,⁶⁰ holding an average daily population of 734,000 (with about 10.3 million admissions per year). About two thirds of incarcerated persons in jails are awaiting court action on their current charge, while the remainder are serving a sentence or awaiting sentencing on a conviction.⁶¹

The primary purposes of local jails are (1) to hold accused law violators who cannot post bond so as to ensure their appearance at trial and (2) to hold those persons convicted of lesser offenses until they complete their court-ordered sentences.

The incarceration of persons charged with crimes and awaiting trial, as well as some persons serving sentences for lesser offenses, distinguishes local jails from state and federal prisons. Whereas prisons house persons convicted of more serious offenses—usually felonies with sentences of a year or more—jails generally hold persons charged with misdemeanors for up to a year.⁶² Jail organization and hierarchical levels are determined by several factors: size, budget, level of crowding, local views toward punishment and treatment, and even the levels of training and education of the jail administrator. An organizational structure for a jail serving a population of about 250,000 is suggested in Figure 12.3.

FIGURE 12.3 ■ Organizational Structure for Jail Serving County of 250,000 Population



Note: DW = day watch; NW = night watch; MW = mid watch; CC = conservation camps; CRTS/Trans = court transportation; OPS/Admin = operation/administration; Comm. Clerks = commissary clerks.

The New Generation/Direct Supervision Jail

Federal courts have at times abandoned their traditional hands-off doctrine toward prison and jail administration, largely in response to the deplorable conditions and inappropriate treatment of incarcerated persons (discussed in more detail in a later chapter). The courts became more willing to hear allegations by incarcerated persons of constitutional violations ranging from inadequate heating, lighting, and ventilation to the censorship of mail.⁶³

In response to lawsuits and to improve conditions, many local jurisdictions explored new ideas and designed new jail facilities. The first **new generation/direct supervision jail** opened in the 1970s in Contra Costa County, California. This facility quickly became a success, was deemed cost-effective to build, was safer for incarcerated persons and staff, and carried several advantages. Officers “live” with the incarcerated persons and are encouraged to mingle with them and to provide them privileges and activities (thus increasing good behavior and reducing idleness) while being better able to control the movements of incarcerated persons. As a result, there is a low level of tension in the unit, as fights are broken up quickly, weapons are not involved, and sexual assaults are almost nonexistent. Bathroom and shower areas are monitored closely, and noise levels are low due to the architecture and close supervision.⁶⁴ To the extent possible, symbols of incarceration are removed in these new jails, which have no bars in the living units; windows are generally provided in every incarcerated person’s room; and padded carpets, movable furniture, and colorful wall coverings are used to reduce the facility’s institutional atmosphere. Incarcerated persons are to be divided into small groups of approximately 40 to 50 for housing purposes. All of these facility features were designed to reduce the “trauma” of incarceration.⁶⁵ Table 12.1 provides three views of how new generation/direct supervision jails are configured.

TABLE 12.1 ■ Direct Supervision Jails

Jails can have a combination of design styles—jails that are not predominantly direct supervision in design or management can have an addition or section of housing that uses direct supervision.

Podular/direct supervision jails—

Cells are arranged around a common area, usually called a “dayroom.” An officer is stationed in the pod with the incarcerated persons. The officer moves about the pod and interacts with the incarcerated persons to manage their behavior. There is no secure control booth for the supervising officer, and there are no physical barriers between the officer and the incarcerated persons. The officer may have a desk or table for paperwork, but it is in the open dayroom area.



David R. Frazier Photolibrary, Inc./Alamy

Linear/intermittent supervision jails—

Includes jails with cells arranged along the sides of a cell block. Officers come into the housing unit on scheduled rounds or as needed to interact with the incarcerated persons.



Andrew Aitchison/Corbis Historical/Getty Images

Podular/remote supervision jails—

Includes jails that have a podular design with cells around a dayroom, but no officer is permanently stationed inside the pod. Indirect supervision is provided through remote monitoring at a console.



MediaNews Group/Orange County Register via Getty Images/MediaNews Group/Getty Images

Source: U.S. Department of Justice, National Institute of Corrections, *Direct Supervision Jails: 2006 Yearbook*, p. vii, <http://nicic.org/Downloads/PDF/Library/021968.pdf>.

Jail Treatment Programs

Rehabilitation and reintegration are considered secondary goals of local jails; however, many of them provide a wide array of programs for incarcerated persons, such as the following types as noted by the National Institute of Justice (NIJ):⁶⁶

- Adult basic education (including computer and other desirable classes)
- Alcoholics Anonymous
- Behavioral-change programs
- Consumer education
- Criminal justice system programs
- Educational enrichment
- English as a second language
- Faith-based living skills
- General educational development (GED)
- Health education
- Mental and physical health programs
- Narcotics Anonymous
- Religious involvement
- Substance abuse education

According to the NIJ, which uses a seven-step review and evidence-rating process,⁶⁷ about 27% of such programs do not accomplish their goals, while about two thirds are “promising” and 6% are “effective.”⁶⁸

Making Jails Productive Through Labor

The 1984 Justice Assistance Act removed some of the long-standing restrictions on interstate commerce of goods made by incarcerated persons. By 1987, private-sector work programs were underway in 14 state correctional institutions and two county jails.⁶⁹ Today, many incarcerated persons in U.S. jails are involved in productive work. Some simply work to earn privileges, and others earn wages applied to their custodial costs and compensation to crime victims. Some hone new job skills, improving their



Many local jails have work programs for incarcerated persons, such as graffiti removal, landscaping, snow removal for elderly community members, and many others. Here, incarcerated persons fill sandbags in preparation for arrival of a hurricane in Florida.

Paul Hennessy/SOPA Images/LightRocket via Getty Images

chances for success following release. At one end of the continuum is the “trusty” (an incarcerated person requiring a low security level) who mows the grass in front of the jail and thereby earns privileges; at the other end are incarcerated persons in jail working for private industry for real dollars.⁷⁰ Some jails have work programs involving training in dog grooming, auto detailing, food service, book mending, mailing service, painting, printing, carpet installation, and upholstering. In addition, some agencies have work programs that use incarcerated persons (who pass a review of their criminal history and disciplinary actions) for such activities as graffiti removal, landscaping, setup and teardown of special events, and snow removal for the elderly and/or disabled.⁷¹

TECHNOLOGIES IN CORRECTIONAL FACILITIES: GOING AFTER CONTRABAND

As with police and court systems, technologies are used in jails and prisons to provide a greater degree of safety for both officers and incarcerated persons and, thus, to improve efficiency and effectiveness of correctional practices. They employ video monitoring, GPS devices worn on wrists, biometric entry points that scan an incarcerated person’s iris or fingerprints, and remote medical tools so incarcerated persons receive virtual checkups from doctors.

However, incarcerated persons have uses for technologies as well, including drones for facilitating their unwavering attempts to bring contraband items into the facility and thus enhance their quality of life. Contraband—including drugs, cell phones, weapons, cigarettes, pornographic materials, and hacksaw blades—has been the bane of prisons and jails since the beginning of time. To obtain these items, incarcerated persons use the U.S. mail, visitors, staff members (correctional staff as well as outside persons, such as building contractors), people who throw items over the walls (such as tennis balls containing drugs), and drones. Some jail and prison officials try to control contraband by using a video visitation system, thereby reducing the amount of contact incarcerated persons have with family and friends, the need for incarcerated person searches, and reductions in staff time. Short of that, however, several means are available for getting contraband and other such items inside the walls.

Next, we focus on the twofold problem of drones and cell phones and what prison officials are doing to try to stop these items from posing major security issues.

A Perilous Combination—Drones and Cell Phones

Drones have been a problem for prisons and jails for years, used to smuggle smaller items (e.g., parcels containing drugs, cell phones) of contraband to incarcerated persons. But could they also be used someday to airlift incarcerated persons over the walls of such facilities? That is one concern expressed in a new report by the Department of Justice (DOJ).⁷² Today’s drones have become cheap and thus more widespread; they can move quickly, hover, and be evasive when necessary. As noted, they can be used to deliver all manner of contraband items into correctional institutions, two items being drugs and cell phones.

The problem of illegal drugs entering prisons and jails via drones is obvious; contraband cell phones can likewise cause all manner of problems, from directing gang activities and violent crimes inside and outside the facility to distributing child pornography and intimidating witnesses outside. This is not an insignificant issue; for example, in a recent year California seized more than 13,000 cell phones in its prisons.⁷³

What can be done? Regarding drones, federal laws and state statutes have been enacted in the United States to prevent drones from hovering over prison and jail airspace. In addition, private companies have developed technology that is essentially drone radar to provide advance warning of an incoming drone, the direction it is coming from, and ultimately the identity of the package recipient and the location of the drone pilot.⁷⁴

Regarding the use of cell phones by incarcerated persons, federal laws prohibit “jamming” of cell phone calls—even illicit calls made by incarcerated persons—because doing so can threaten the making of legitimate 9-1-1 and other public safety phone calls by prison and jail staff. However, relatively new technology called “inmate call capture” does not jam signals but rather acts like a cellular base

station that picks up calls made within the prison and passes along only authorized calls. If a cell phone number is on an approved list, the call will be instantaneously handed off to the cellular phone company and handled normally. If the call is not on this list—meaning it is illegally placed by or to an incarcerated person—the call will not be completed and can receive an intercept message stating the call is not authorized.⁷⁵

The Body Scanner

Another tool being used against contraband and adding another layer to the screening process is the body scanner, which functions the same as those used at airports. Penal facilities have long used metal detectors, but they cannot detect illegal drugs and nonmetallic objects. Body scanners can spare corrections officers the need to conduct traditional, unclothed searches of incarcerated persons requiring several minutes' time (these can be accomplished in 10 seconds). The devices pay for themselves by reducing the need for officer overtime and workplace injuries. Some institutions have even purchased scanners using funds from the prison canteen (a store where incarcerated persons buy snacks, hygiene items, etc.), which are normally used to buy items that benefit incarcerated persons; they justify this use by saying the device benefits incarcerated persons by sparing them the time and embarrassment of an unclothed search.⁷⁶

YOU BE THE . . . WARDEN

You are a prison warden in a city where three drone drops have occurred over the prison yard over the past month. This has led to an escalation in the institution's drug problems, particularly with synthetic opioids like fentanyl. You managed to capture one drone pilot and suspect the others, like this one, are not local but instead are experts who are hired by incarcerated persons who are well-off to fly in the illicit drugs and other items, which are then sold at exorbitant prices. While you are working on a solution, you learn from inside sources that more drops are planned in the near future.

You also hear of two possible means for intercepting the drones. One is the use of eagles, which police in the Netherlands have employed for grabbing and taking down rogue drones. Their sharp talons and keen eyesight make it possible for them to pinpoint and pluck a drone from the sky in a simple maneuver. The other means is the use of a laser weapons system that effectively blows drones out of the sky.

1. Assuming cost is not an issue, should your prison and others use one or both of these tools?
2. Can you foresee serious problems in the deployment of either method? If so, what are they?

See the Notes section at the end of the book for assistance in arriving at a decision.⁷⁷

Offender Programming and Management

Technology is changing the methods of management of people involved in the criminal justice system through the use of web-based systems that provide educational programs to incarcerated persons, treat incarcerated persons who are addicted to drugs or who have committed sex crimes, and provide vocational training. Prison administrators now keep accurate records of incarcerated persons' purchases for items in the prison store, payments to victims and their families, and other reasons for which money flows in and out of an incarcerated person's bank accounts.⁷⁸ Automated systems also control access gates and doors, individual cell doors, and the climate in cells and other areas of the prison. Correctional agencies have also used computers to conduct presentence investigations, supervise people who have committed offenses in the community, and train correctional personnel. With computer assistance, jail administrators receive daily reports on court schedules, rosters of incarcerated persons, time served, statistical reports, maintenance costs, and other data.

IN A NUTSHELL

- Erving Goffman described the characteristics of “total institutions.” His definition seems to capture the essence of correctional organizations. Unfortunately, most of what the public “knows” about prisons and jails is probably obtained through Hollywood’s fictional versions.
- Differences between jails and prisons concern the nature of the crime and the length of the sentence to be served. A jail is a short-term, often temporary holding facility for persons recently arrested and awaiting trial; or incarcerated persons who might be serving short sentences for misdemeanors, generally 1-year’s duration or less. Prisons are designed for longer confinement, normally more than 1-year’s duration. People convicted of committing federal crimes are typically sentenced to federal prisons, and those who break state laws go to state prisons.
- Although prison and jail incarceration rates have generally fallen slightly each year since 2008, recently jail populations began to rebound, mostly due to the COVID-19 pandemic.
- Correctional organizations are complex, hybrid organizations that use two related management subsystems to achieve their goals: One is managing correctional employees, and the other is concerned primarily with delivering correctional services to a designated incarcerated population.
- The correctional security department is typically the largest department in a prison, with 50% to 70% of all staff. It supervises all the security activities within a prison.
- The unit management concept was originated by the federal prison system in the 1970s to control prisons by providing a “small, self-contained, living area for incarcerated persons and staff office area that operates semi-autonomously within the larger institution.” Unit management breaks the prison into more manageable sections based on housing assignments.
- Education departments operate the academic teaching, vocational training, library services, and sometimes recreation programs for incarcerated persons.
- Prison industries are separate government corporations that provide meaningful, productive employment that helps reduce incarcerated persons’ idleness and supplies companies with a readily available and dependable source of labor.
- Correctional staff must make classification decisions in at least two areas: the incarcerated person’s level of physical restraint, or “security level,” and the incarcerated person’s level of supervision, or custody grade.
- The Federal Bureau of Prisons operates institutions at five different security levels in order to confine persons convicted of criminal offense in an appropriate manner. Security levels are based on such features as the presence of external patrols, towers, security barriers, or detection devices; the type of housing within the institution; internal security features; and the ratio of staff to incarcerated person. Each facility is designated as minimum, low, medium, high, or administrative security.
- In 2018, President Trump signed into law the First Step Act, which seeks to improve criminal justice outcomes and to reduce the size of the federal prison population.
- Supermax prison operations are quite different from traditional prisons. Incarcerated persons rarely leave their cells; they eat all their meals alone in their cells; typically, no group or social activity of any kind is permitted; and they are typically denied access to vocational or educational training programs. Although little research has examined the effects of supermax confinement, some authors point to previous isolation research that shows greater levels of deprivation lead to psychological, emotional, and physical problems.
- Regarding the private operation of prisons by a for-profit company, proponents argue they are an effective, cost-saving alternative; opponents say there is generally less accountability and that a private prison company might go bankrupt or increase its fees to the state.

- The primary purpose of jails is to hold accused law violators who cannot post bond to ensure their appearance at trial and to hold those persons convicted of lesser offenses until they complete their court-ordered sentences.
- The term “new generation jail” refers to a style of architecture and management of incarcerated persons that is totally new and unique to local detention facilities. There is a greater level of personal safety for both staff and incarcerated persons, greater staff satisfaction, more orderly and relaxed housing areas, and a better maintained physical plant; these facilities are also cost-effective to construct and to operate.
- Today, many incarcerated persons in U.S. jails are involved in productive work and treatment programs. Some simply work to earn privileges, and others earn wages applied to their custodial costs and compensation to crime victims. Some hone new job skills, improving their chances for success following release.
- Prison and jail administrators must prepare for the onset of infectious diseases in their facilities, and there are a number of measures that can be adopted to enhance their ability to do so.
- Technological developments have improved the operations and safety of correctional institutions, but the use of drones and cell phones by incarcerated persons has created serious security concerns.

KEY TERMS

Classification (of incarcerated persons) (p. 289)	Privatization (p. 297)
Jail (p. 284)	State prison (p. 290)
New generation/direct supervision jail (p. 299)	Supermax prison (p. 294)
Prison (p. 285)	Warden (p. 290)
Prison industries (p. 292)	

REVIEW QUESTIONS

1. What are the primary factors that distinguish a prison from a jail?
2. What is the general mission of a correctional organization?
3. How is it that, for many members of our society, being incarcerated is not “punishment” but rather an improved lifestyle?
4. What is the basic purpose underlying classification of incarcerated persons?
5. What are the basic elements of the federal prison system?
6. What are some of the elements of the First Step Act of 2018 for incarcerated persons in federal prisons?
7. How would you describe supermax prisons and how they differ from conventional prisons?
8. How do private prisons differ in structure and function from traditional, government-operated institutions?
9. How do jails differ in structure and function from prisons, what programs are provided for the rehabilitation of incarcerated persons, and how does the new generation jail differ from the traditional model?
10. What are some of the measures espoused by Human Rights Watch for prisons and jails to prepare for the outbreak of infectious diseases?
11. Describe some of the technologies now in use in corrections, with particular emphasis on methods for halting drone and cell phone use by incarcerated persons.

LEARN BY DOING

1. Assume you are on a high school recruiting trip for your university's criminal justice department. A member of a large student group mentions he wishes to major in criminal justice. He is motivated to do so by an uncle's criminal experiences, for which he is "serving a 3- to 5-year supermax sentence in a jail for robbing people's homes while they were away at work." Because he is overheard by the group and obviously misspeaking about several terms and concepts, you wish to tactfully correct his miscues. How many factual errors were made in his statement? What, if anything, will you say to him?
2. You are assigned as part of a "Current Correctional Practices" class project to explain the differences between supermax and traditional prisons as well as traditional and new generation jails. What will be your response?
3. Your criminal justice professor assigns the class to prepare a paper on the major differences between state prisons and local jails, including their structure and function. How will you delineate the differences between them?



©iStockphoto.com/South_agency

13

THE WORLD BEHIND BARS

The “Keepers” and the “Kept”

LEARNING OBJECTIVES

As a result of reading this chapter, you will be able to

- 13.1** Describe generally the nature of incarceration, including its deprivations, conditions, and the process of prisonization.
- 13.2** Identify the general duties of wardens, correctional officers, and jail workers.
- 13.3** State the challenges encountered (e.g., sexual violence, drugs, mental illness, membership in gangs, incarcerated women) by correctional staff members.
- 13.4** Describe several major federal court decisions that greatly expanded the rights of incarcerated persons.
- 13.5** Describe some important measures that can be taken to assist with incarcerated individual's reentry and aftercare.

ASSESS YOUR AWARENESS

Test your knowledge of prison inmates and employees by responding to the following seven true-false items; check your answers after reading this chapter.

- 1.** Under our system of justice, it may be said that incarcerated persons generally are not to suffer pains beyond the deprivation of liberty; confinement itself is the punishment.
- 2.** The warden's philosophies regarding security and treatment will have a major impact on incarcerated persons and staff.
- 3.** Today, the courts generally follow a hands-off policy regarding prison and jail administration, allowing administrators to run their institutions as they see fit.
- 4.** Supreme Court decisions support the notion that there exists an "iron curtain" between the U.S. Constitution and the prisons—that is, incarcerated persons have no rights.
- 5.** Federal legislation exists to collect data concerning the incidence of sexual assault in correctional facilities and to develop national standards for preventing prison rape.
- 6.** Prisonization, a process whereby an incarcerated person takes on the value system of the prison and its culture, actually helps rehabilitate them.
- 7.** Like the police, prisons and their personnel subscribe to the paramilitary system, having ranks, division of labor, and so on.

Answers can be found on page 401.

In his 1981 book *In the Belly of the Beast: Letters From Prison*, twice-convicted murderer Jack Henry Abbott (who spent most of his adult life in prison) wrote, "Men who had been in prison as much as five years still knew next to nothing on the subject. It probably took a decade behind bars for any real perception on the matter to permeate your psychology and your flesh."¹

An earlier chapter mentioned Erving Goffman's definition of total institutions; although Goffman focused on mental institutions, his definition would certainly apply to prisons as well: "a place of work and residence where a great number of similarly situated people, cut off from the wider community for a considerable time, together lead an enclosed, formally administered round of life."²

Countless articles are written each year about the many aspects of life inside U.S. prisons and jails, to include such topics as brutality against incarcerated persons, the effects of incarceration, mental illness in incarcerated persons, deaths behind bars, COVID-19 and

other medical issues, sordid conditions, length of sentences, introduction of contraband, and so on. But how much is really known about the lives of the “keepers” and the “kept” in these institutions?

Much research has been achieved regarding these questions, but as you read this chapter, consider areas where greater transparency is needed in terms of the public’s knowledge of what goes on inside places of incarceration. This is an especially timely topic in this age of transparency as it applies to politics, business, sexual harassment, and so on.

INTRODUCTION

In 1971, Stanford University researcher Philip Zimbardo set up a mock prison experiment he hoped would explain the abusive behaviors that had been going on in prisons. He paid 24 undergraduate student volunteers to assume the roles of “prisoners” and “guards” and run the prison as they saw fit. The experiment lasted only 6 days; volunteers internalized their roles to the extent that the guards began using authoritarian measures and ultimately subjected some of the prisoners to psychological torture. Within 36 hours, prison revolts broke out.³ More than 4 decades later, this study is still widely discussed in academia and the media and is often cited as one of the most influential studies of human behavior. Indeed, in early 2015 a film based on the study had its world premiere at the Sundance Film Festival in Park City, Utah.⁴



Dr. Philip Zimbardo’s Stanford Prison Experiment examined the psychological effects of becoming a prison guard or inmate. Here, Dr. Zimbardo attends the premiere of *The Stanford Prison Experiment* in New York City in July 2015.

Taylor Hill/FilmMagic/Getty Images

As indicated in an earlier chapter, prisons and jails, and the lives of their inhabitants, have always held a fascination for many of us. We wonder, what kinds of lives are led by those who are confined in and those who work in that environment? What are the challenges faced by female, older adult, or mentally ill incarcerated persons? How are members of gangs and drugs dealt with administratively? What constitutional rights do incarcerated persons possess? This chapter addresses those questions.

Presented first is a look at the general nature of incarceration, including its deprivations, effects, prisonization of incarcerated persons, and conditions of confinement (including solitary). Following that is a discussion of the roles of prison wardens, correctional officers, and jail personnel. Next, reviews of several issues of prison governance: sexual violence, drug use, incarcerated persons with special needs

(e.g., women, mentally ill, older adults), members of gangs, and riots. Finally, after examining incarcerated persons' constitutional rights based on selected federal court decisions, we offer a brief discussion of how incarcerated persons are prepared for reentry and aftercare. Several case studies and a Going Global entry are included as well.

When examining what correctional personnel do, it would be good to remember two basic principles put forth by prison expert John DiIulio Jr. First, incarcerated persons are not to suffer pains beyond the deprivation of liberty; as indicated earlier, confinement itself is the punishment. Second, regardless of the crime, even the person who has committed the most heinous offense is to be treated with respect and dignity.⁵ The analysis of correctional institutions that follows is predicated on these two principles.

THE NATURE OF INCARCERATION

As noted in an earlier chapter, about 1.5 million Americans are now incarcerated in U.S. federal and state prisons, and another 740,000 persons are held in local jails.⁶ The United States has (with about 655 incarcerated persons per 100,000 population) the highest imprisonment rate in the world.⁷ There are about 10.75 million incarcerated persons worldwide.⁸

In this section, we briefly examine the deprivations and conditions of confinement, as well as some of the means (mostly illegitimate) employed by incarcerated persons to try to ease their discomfort. Included are findings on the effects of solitary confinement.

Deprivations and “Pains” of Imprisonment

Prisons vary in their environments and practices. Most prisons are said to “expose prisoners to severe levels of deprivation, degradation, and danger.”⁹ The extreme stress that can arise due to these circumstances can adversely affect incarcerated persons' physical and mental health. Emotional numbing, anxiety, isolation, and hypervigilance—not unlike what is experienced by military veterans with post-traumatic stress disorder (PTSD)—can occur in incarcerated persons as much as 10 times more often than in the general population.¹⁰ Furthermore, these pains of imprisonment can produce long-lasting effects that persist well after an incarcerated person is released.



Among the deprivations of incarceration are those involving goods and services; incarcerated persons do not have access to the wide array of food, entertainment, and services that free people enjoy.

Ed Glazar/Gillette News Record via AP

Although many people—and certainly many crime victims—would argue that prison life today is too “soft” for incarcerated persons, Gresham Sykes described the following “pains of imprisonment”:

- *Deprivation of liberty:* Incarcerated persons’ loss of freedom is the most obvious aspect of incarceration; however, not only does this restriction of movement include living in a small space such as a prison cell, but it also includes doing so involuntarily. Friends and family are prohibited from visiting except at limited times, causing relationships to fray. Sykes said this pain of imprisonment is the most acute because it represents a “deliberate, moral rejection of the criminal by free society.”¹¹
- *Deprivation of goods and services:* Incarcerated persons do not have access to the wide array of food, entertainment, and services that free people enjoy. For some incarcerated persons, this is a relative loss because prison life is a “step up,” and having room and board provided to them each day is an improvement in lifestyle. Sykes, however, felt that some incarcerated persons view this impoverishment as the prison’s acting as a tyrant to deprive them of the kinds of goods and services they deserve.¹²
- *Deprivation of heterosexual relationships:* Incarcerated persons do not leave their sexuality at the front gate while incarcerated. This is certainly an area of prison life that represents a source of major stress and violence. In men’s prisons, Sykes contended, where one’s self-concept is tied to his sexuality, depriving men of female company means their “self-image is in danger of becoming half complete, fractured” and, as described later, with often-violent results.¹³
- *Deprivation of autonomy:* Incarcerated persons cannot make decisions for themselves about the most basic tasks, such as walking from one room to another, when they will eat and sleep, and so forth, and they must ask for everything. Bureaucratic rules and staff control their lives, and finding ways to cope with this deprivation can lead to stress.
- *Deprivation of security:* Perhaps the most stressful pain of imprisonment, there are few places in the institution where the incarcerated person can feel secure, and they are confined with people who are brutish and violent. Having to “watch one’s back” and cope with people who continually test each other and seek out weaknesses in others will lead to internal power struggles, development of gangs, and other forms of “protection.”

Becoming “Prisonized”

Incarcerated persons differ in their ability to adapt, cope, and adjust to the pains of imprisonment. The process of socialization—legitimizing, adjusting to, and accommodating the prison subculture’s norms and values—is termed **prisonization**. According to prison expert Jeanne Stinchcomb, incarcerated persons conform to the norms and values considered socially acceptable by other incarcerated persons—“for example, disdain for the system and those in authority, use of vulgar language, name calling, distrust of fellow incarcerated persons and staff, and acceptance of the status quo.”¹⁴ Stinchcomb compares the institutional adaptation of an incarcerated person to

breaking the spirit of a wild horse to shape its response to the commands of the rider. Like horse and rider—who develop a working accommodation with each other—the subsequent relationship is characterized by routines of dominance, surrender, and behavior on cue. Among inmates, this conformity creates a façade of courtesy toward authority figures and promotes flat, noncommittal responses to others, which are devoid of any emotional investment.¹⁵

Furthermore, every correctional institution has informal and unwritten norms, the violation of which can quickly bring the wrath of other incarcerated persons, ranging from ostracism to

physical violence or death. These informal rules, as originally set down by Gresham Sykes and Sheldon Messinger, are as follows:¹⁶

- *Don't interfere with the interests of other incarcerated persons.* This means that incarcerated persons “never rat on an incarcerated person” or betray each other; don’t be nosy, don’t have loose lips, and never put an incarcerated person on the spot. There is no justification for not complying with these rules.
- *Don't quarrel or feud with fellow incarcerated persons.* This is expressed in the directives “Play it cool” and “Do your own time.”
- *Don't exploit other incarcerated persons.* In incarcerated persons’ culture, this means “Don’t break your word,” “Don’t steal from other incarcerated persons,” and “Don’t go back on bets.”
- *Don't weaken; withstand frustration or threat without complaint.* This means “Be tough” and “Be a man.”
- *Don't trust the custodians or the things they stand for.* This translates to “Don’t be a sucker” and “The officials are wrong, and the incarcerated persons are right.”

Incarcerated persons living in a poorly run prison may face a stark choice: become either a victim or a victimizer. A study of a maximum-security prison in the South found that three fourths of the incarcerated persons had been forced to “get tough” with other incarcerated persons to avoid victimization, and more than one fourth kept a “shank” (some object fashioned into a makeshift knife) for self-defense.¹⁷ Fear is equated with weakness, and weakness invites aggression.¹⁸

Overcrowding can exacerbate all of the other pains of imprisonment. Not only is crowding a major source of administrative problems, but it also can adversely affect an incarcerated person’s health, behavior, and morale. Crowding has been shown to elevate incarcerated persons’ blood pressure, lead to increased illness complaints, and cause high levels of stress.¹⁹

Conditions of Confinement

What constitutional requirements of confinement must be met with persons who are incarcerated? (Specific rights such as access to courts and legal materials, religion, and due process are discussed later in this chapter.) To begin, in *Price v. Johnston* (1948), the Supreme Court observed that “lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights.”²⁰ More recently, in 1981 the Court stated that routine discomfort is “part of the penalty that criminal offenders pay for their offenses against society”; therefore, only those deprivations that deny “the minimal civilized measure of life’s necessities” are sufficient to be considered in violation of the Eighth Amendment (i.e., constitute cruel and unusual punishment).²¹

However, the courts have said that conditions in prison must not involve the wanton and unnecessary infliction of pain, nor be grossly disproportionate to the severity of the crime for which one is imprisoned. Even in the case of emergency actions or critical incidents, only malicious or sadistic acts by prison officials will be deemed unconstitutional. When an incarcerated person alleges that excessive force was used, the standard involved is whether or not the force was applied in good faith so as to maintain or restore discipline.²² Finally, in *Whitley v. Albers* (1986), the Court held that correctional staff in Oregon did not violate the Eighth Amendment when using potentially deadly force rather than tear gas to quell a prison riot (the plaintiff was shot in the knee during the riot).²³ The Court said the use of such force to quell a disturbance is unconstitutional only if it is done “sadistically or maliciously.” Thus, the Court continued its trend of allowing prison officials broad discretion to preserve order and discipline, while restricting the rights of incarcerated persons where necessary.

Case Study 13.1

Congressional Calls to Close Rikers Island

In late 2021, four members of the U.S. Congress in New York demanded the release of incarcerated persons and closure of the city's Rikers Island jail complex after the 11th incarcerated person was reported dead at the facility, where long-standing problems were exacerbated by the pandemic. (Rikers is in The Bronx on the East River, holds about 6,000 incarcerated persons, and has a reputation for violence, deaths, sexual assaults, and mistreatment of incarcerated persons with mental illness.) It was alleged that the jail had failed to provide incarcerated persons with basic services and protection against COVID-19, that conditions were life-threatening and horrific, and that overflowing toilets, dead cockroaches, and feces and rotting food were seen on floors. Officials claimed that conditions were also worsened due to a slowdown in court proceedings, leaving more incarcerated persons in the jail while at the same time there were chronic staff shortages (at one time, more than one third of the officers were on sick leave or deemed medically unfit to work). The state's governor and city's mayor implemented measures requiring all officers to get a doctor's note if missing more than 1 day's work (or be suspended without pay) and to largely eliminate the incarceration of people for technical (no new crime) offenses.²⁴

PRACTITIONER'S PERSPECTIVE

JAIL LIEUTENANT: SUPERVISING STAFF AND INCARCERATED PERSONS

Name: Amelia Galicia

Position: Corrections Lieutenant, Assigned to Detention Division

Location: Washoe County Sheriff's Office, Reno, Nevada

Colleges Attended/Academic Majors: University of Louisville, Master's degree, Criminal Justice (in progress); University of Nevada, Reno, BA in Journalism/Public Relations

How long have you been a practitioner in this criminal justice position? For 16 years; I worked as a deputy sheriff for 12 years, promoting to the rank of sergeant and holding that position for 3 years, and then to lieutenant approximately 6 months ago.



What are the duties and responsibilities as a practitioner in this position? A deputy sheriff working in the detention facility has a wide variety of duties and responsibilities, depending on where they are assigned to work. Detention deputies are responsible for the care and custody of all incarcerated persons housed in the detention facility; they ensure that incarcerated persons get to their court appearances, facilitate programs for incarcerated persons within the detention facility, assist nurses with medication pass, respond to any emergencies in the facility (e.g., fights or medical emergencies), investigate all crimes within the facility, and write reports. My facility has 17 housing units and houses approximately 1,100 pre-trial detainees. Upon the incarcerated person's arrival, deputies ensure they are thoroughly searched, booked, showered and issued clothing, interviewed and cleared by medical staff, and then by court services to assess their eligibility for release-on-recognizance. Next, they will be entered into the computer system on their current charges and escorted to a housing unit. Incarcerated persons are classified at different levels (e.g., minimum, medium, medium felony, or maximum), which determines where they will be housed.

What are the qualities/characteristics that are most helpful for one in this career? The ability to multitask is critical to this field. Dynamics within the detention facility are constantly changing and fluid. Deputies must be able to do many things at once and do them well. Working in a correction setting also requires the deputy to have self-awareness, the ability to manage stress, and excellent verbal and written communication skills. As the profession of law enforcement evolves, our ability to communicate effectively with incarcerated persons is paramount to our success. Being a hard worker with a strong work ethic is always appreciated, but so is innovation. Being able to look at a problem and think critically about how to resolve the issue is essential.

In general, what does a typical day for a practitioner in this career include? Deputies assigned to work a housing unit begin their shift by responding to the housing unit and counting the incarcerated persons' movement cards, which are like a "driver's licenses." The cards are kept by the deputy in the housing unit, and any time an incarcerated person leaves a housing unit, or a location, they must take their movement card with them. The total number of movement cards should match the total number of incarcerated persons in the housing unit. After they confirm the numbers match, the deputy is required to do a formal identification. This means taking the books that hold the movement cards and walking the housing unit, going cell to cell and comparing the photo on the movement card for that cell, matching the incarcerated persons physically in that cell. This formal identification count ensures all incarcerated persons are properly accounted for at the beginning of every shift. Our jail is called a "direct-supervision" jail, meaning the deputies work inside the housing unit and are expected to interact and mingle among the incarcerated persons. Deputies are required to ensure incarcerated persons get time out of their cell, referred to as "tier time." During tier time, incarcerated persons can shower, make phone calls, watch TV, clean their cells, mingle with other incarcerated persons, and use the exercise yard. Deputies are responsible for getting incarcerated persons to their court appearances, helping nurses with medication pass, ensuring incarcerated persons are available for their personal and professional visitors, and overall observation of the housing unit. Deputies should be aware of the dynamic and mood within their housing unit and be able to identify issues or problem-incarcerated persons and deal with them appropriately. As a lieutenant assigned to the detention facility, my main responsibility is to ensure my shift has all the resources they need to do their job. The overall operation of the facility is my responsibility as well. That entails managing resources, making decisions about the daily operation, reviewing use of force reports and risk-management paperwork, reviewing and either approving or denying all vacation and training requests, and communicating with the upward chain of command.

My advice to someone either wishing to study, or now studying, criminal justice and to become a practitioner in this career field would be to . . . finish college! While a lot of agencies never required or no longer require a college degree, I firmly believe the experience of going to college and graduating helps to prepare you in so many other areas that are crucial to your success in this career. A true college experience will help teach you skills in stress management, time management, verbal and written communication, and the ability to multitask. College students learn how to multitask and think critically. Secondly, get involved with law enforcement by doing ride-alongs, Explorer programs, reserve programs, or "walk-alongs" in a jail setting. Start learning the ins and outs of the business and preparing yourself to be well-rounded and ready for a career in this profession. Lastly, general life experience is beneficial and will help you be more successful in your career.

Solitary Confinement: Use and Effects

As noted in the accompanying Investigating Further box, today an estimated 67,000 incarcerated persons nationwide are spending up to 22 hours a day alone in a cell. The number of incarcerated persons serving time in **solitary confinement** (also termed administrative segregation, restrictive housing, or the box) has grown tremendously, coinciding with the supermax prison concept (discussed in an earlier chapter) that began to proliferate in the mid-1980s. The solitary cells typically have a toilet and a shower, a slot in the door large enough for an officer to slip a food tray through, and little else. Incarcerated persons in solitary confinement are generally not allowed to make telephone calls or have contact visits, and their recreational regimen often involves being taken to another solitary area where they pace alone for an hour before being returned to their cell.²⁵

Contrary to what the general public might believe, there is no limit on the length of time an incarcerated person might serve in solitary confinement; the courts' primary concern is that the

constitutional requirements for care and custody that apply to all incarcerated persons be met. Indeed, there have been cases where incarcerated persons have spent decades in such confinement. One case involved the so-called Angola Three—Robert H. King, Albert Woodfox, and Herman Wallace, three Black Panthers who were put in solitary confinement in Louisiana’s Angola Prison after the 1972 killing of a correctional officer. King spent 29 years in solitary confinement before his conviction was overturned and he was released. Wallace and Woodfox both spent 40 years in solitary confinement. The three have been the subject of two documentary films and international attention.²⁶

A large number of studies—dating back to the 19th century—have indicated that solitary confinement profoundly affects an incarcerated person’s psychological and physical health.²⁷ As a result, many researchers and civil rights organizations have long called for it to be banned. Most of the damage done to an incarcerated person is psychological and can include psychosis and paranoia; anxiety; depression, varying from low mood to clinical depression; anger; cognitive disturbances; and perceptual distortions. Physiological effects of solitary confinement, owing largely to lack of access to fresh air and sunlight and long periods of inactivity, include gastrointestinal, cardiovascular, and genitourinary problems, migraine headaches, and profound fatigue. Insomnia, back and other joint pains, deterioration of eyesight, and poor appetite and weight loss are often observed.²⁸ Although the U.S. Supreme Court has taken notice of such negative effects, for more than 125 years (see *In re Medley* [1890]),²⁹ the federal courts have generally not intervened unless the conditions of confinement were so inadequate as to be tantamount to cruel and unusual punishment.

In the summer of 2016, President Obama directed the Department of Justice (DOJ) to review the use of solitary confinement for the 100,000 persons then being held in federal prisons. Although finding certain circumstances in which such confinement is a necessary tool (e.g., to protect the incarcerated persons themselves, staff, and other incarcerated persons), the DOJ put forth a number of recommendations to reform the federal prison system, which the president adopted: banning solitary confinement for juveniles, expanding treatment for persons with mental illness, and increasing the amount of time incarcerated persons in solitary can spend outside of their cells.³⁰

Case Study 13.2

Chauvin to Face a Long Solitary Term in Prison

Unless an appeal of his conviction works in his favor, former Minneapolis police officer Derek Chauvin stands to serve a long, isolated term in prison for his slaying of George Floyd. Chauvin was sentenced in July 2021 after jurors convicted him of second-degree unintentional murder, third-degree murder, and second-degree manslaughter by kneeling on Floyd’s neck for about 9.5 minutes. Corrections personnel stated Chauvin will be allowed up to 10 photos, subscriptions to periodicals, a radio, and canteen food, while being allowed out of his cell for an hour per day to exercise alone. He may receive up to three noncontact visits per week and electronic mail messages. As one law professor stated, he faces significant safety risks, and “his life is going to be a totally barbaric existence.”³¹

PRISON AND JAIL AS WORK

As perilous as places of confinement are for incarcerated persons, so, too, are they perilous for prison correctional staff—all of whom are generally unarmed, and most of whom are outnumbered. It is probably a tribute and great credit to both prison and jail administrators and staff across the nation that so few institutional riots and other serious incidents occur in the United States, especially when one considers the staff is so outnumbered.

Even so, since the beginning of institutional confinement there has been a need for prison (and jail) administrators and **correctional officers** (COs) to develop tactics and equipment to handle outbreaks of violence among incarcerated persons. COs often train with such devices in full view of the incarcerated persons to demonstrate the kinds of tools that can be employed. According to one prison administrator, what separates prison professionals from incarcerated persons is constant training as well as

measured, unflappable control.³² In this section, we look at the work of wardens as well as front-line COs and other custodial staff.

The Warden: Profile and Role

Who are prison wardens? Succinctly, a national survey of 326 wardens in 43 states found they had been working in the corrections field for about 27 years; more than three fourths (78%) were male, and their average age was 52 years. Most of them (51%) possessed a bachelor's degree, and another 21% had a higher degree. About three fourths identified as Caucasian, 18% as African American, and 4%, Hispanic.³³



Warden Esther Torres walks through one of the dormitories at the Willard-Cybulski Correctional Institution in Connecticut. Torres oversees a staff of 234 people and 1,160 prisoners.

AP Photo/Bob Child

Ultimately, all topics discussed in this chapter are the responsibility of those who govern the prisons—state directors of prisons and their individual prison wardens. The challenges these administrators face include such daunting responsibilities as addressing prison litigation, administering capital punishment, attempting to prevent institutional problems relating to drugs and gangs, and addressing all manner of staffing needs and problems.

Prison administration is now more challenging than ever—made much more so because of recent fiscal crises facing all states as well as the federal government. Two former prison wardens from a western state have provided solid advice for administering prisons in general and, specifically, in times of fiscal exigency.

First, the wise prison warden will recognize that there is simply never enough money to accomplish all four goals of punishment: to *incapacitate* and *rehabilitate* incarcerated persons and to provide *deterrence* to crime and *retribution*. Different states have different correctional philosophies, and that will affect how they budget and spend their prison monies. Choices need to be made—bearing in mind that the warden must, first and foremost, provide for incapacitation—while providing society, staff, and incarcerated persons a safe facility. Therefore, it is important to focus on operations, programs, and finances.³⁴ The warden's philosophies regarding security and treatment will have a major impact on both the incarcerated persons and staff. In addition to providing incarcerated persons with a variety of vocational training programs (including manufacturing items such as limousines and outdoor furniture and training wild horses) and a wide variety of physical fitness equipment, some prisons have allowed incarcerated persons to ride and repair their motorcycles inside the walls;³⁵ have a band; and engage in unlimited planting of gardens, sunflowers, and fruit trees to occupy their time.

Other wardens take a more hard-line approach and even discontinue those amenities that their predecessors initiated. For example, one warden recently halted the planting of sunflowers because incarcerated persons were planting them close to the fence line, and when the night breeze caused the sunflowers to stir from side to side, officers in the gun towers were lulled into a state of complacency—becoming conditioned to ignore the movement in the area, which posed a security risk. Another prison director recently disallowed incarcerated persons to form bands and the planting of gardens and flowers in the prison yard on grounds of institutional security (incarcerated persons were concealing weapons and other contraband in the gardens and flowers).³⁶ Note also that once such privileges are given to incarcerated persons, it is very difficult to take them away without generating considerable angst.

Today's prison wardens and other correctional staff members (and jail personnel as well) need to be as aware as possible of their surroundings and the general goings-on within the institution. As with police officers, whose academy training was discussed in an earlier chapter, these correctional workers must also nurture a "sixth sense"—a suspicion that something may be wrong.

A former western prison warden termed this ability **JDLR**—knowing when things "just don't look right."³⁷ To maintain a sense of what's going on with the incarcerated persons—"reading the

yard”—some wardens recommend that they and their staff walk the yard at least two times each day. Following are some aspects of the yard that should be noted and may portend trouble:

- Incarcerated persons banding together in groups—in political associations (i.e., by race, ethnicity, gang affiliation, etc.)
- Loud music playing (possibly to conceal conversations and activities from the staff)
- Unusually high canteen spending, with incarcerated persons purchasing long-term items, such as canned goods (which might indicate a riot is being planned)³⁸

Other custodial staff members at most prisons are typically divided into the following ranks: captain, lieutenant, and sergeant. Captains typically work closely with the prison administration in policy-making and disciplinary matters; lieutenants are even more closely involved with the security and disciplinary aspects of the institution; and sergeants oversee in their span of control a specified number of rank-and-file COs (discussed next) who work in their assigned cell blocks or workplaces.

Correctional Officers

Subordinate to the prison administrators, middle managers, and supervisors are the correctional staff members—those persons who ensure the care, custody, and control of incarcerated persons as per agency policies and procedures and, in the words of Gordon Hawkins, are “the other prisoners.”³⁹ According to the Bureau of Labor Statistics, there are approximately 470,000 correctional officers in the United States, with a median annual salary of about \$43,500.⁴⁰ Their primary role is to provide the front-line supervision and control of incarcerated persons and constitute the level from which correctional administrators may be chosen. They manage and communicate with incarcerated persons, peers, and supervisors; direct movement of incarcerated persons; maintain key, tool, and equipment control; distribute authorized items to incarcerated persons; and maintain health, safety, and sanitation.

The term “correctional officer” was adopted during the 1970s (replacing *guard*) as the official occupational reference term used by the U.S. Department of Labor. The position of correctional officer became available to both men and women. Other changes included closer screening and hiring by civil service exams. Likewise, the entry-level salary, overtime and hazardous duty pay, pension plans, and recognition as public safety “peace officer” status by state law also served to enhance the recruitment pool and long-term retention of correctional personnel. Staff training programs were also improved to include topics such as constitutional law and cultural awareness, behavior of incarcerated persons, contraband control, custody and security procedures, fire and safety, legal rights of incarcerated persons, written and oral communication, use of force, first aid including cardiopulmonary resuscitation (CPR), and physical fitness training.⁴¹

Although sharing some traits and duties in common with police officers—academy training, paramilitary nature (e.g., chain of command, wearing of uniforms, use of weapons, enforcement of laws), and problem-solving—the jobs of police officers and correctional officers are vastly different. First, whereas police officers typically deal with only a small segment of the general public who wish to do them harm, a CO works with hundreds of incarcerated persons convicted of felonies who can easily become dangerous.

Furthermore, COs experience stimulus overload, assailed with the sounds of “doors clanging, incarcerated persons talking or shouting, radios and televisions playing, and food trays banging. . . [and odors] representing an institutional blend of food, urine, paint, disinfectant, and sweat.”⁴² According to a federal report, sources of stress for COs include organization-related conditions, such as understaffing, overtime, shift work, and unreasonable supervisor demands; work-related sources of stress, including the threat of violence, actual violence from incarcerated persons, demands and manipulation from incarcerated persons, problems with coworkers; and a poor public image and low pay.⁴³ According to one Michigan study, all of this can lead to high levels of PTSD for the officer.⁴⁴ Furthermore, due process rights for incarcerated persons and the constant threat of lawsuits have made corrections jobs even

more difficult,⁴⁵ leading to what Richard Hawkins and Geoffrey Alpert referred to as “the big bitch” of correctional officers: They are losing power and influence while incarcerated persons are gaining them.⁴⁶ This frustration can be vented in physical ways.⁴⁷ The following is a more specific listing of duties of the correctional officers:

- *Cell block officers:* Officers supervise the daily activities and the general “well-being” of the incarcerated persons in the cell blocks to ensure the incarcerated persons follow institutional rules and routines, to ensure incarcerated persons do not harm themselves or others, and to assist incarcerated persons who are experiencing problems of a personal nature.
- *Work detail supervisors:* Many prisons have incarcerated persons working in various positions, such as the prison cafeteria, laundry, and other such locations; officers must supervise them during such activities.
- *Industrial shop and educational programs:* Prison industries have incarcerated persons producing everything from license plates and state-use paint to mattresses and computer parts; correctional officers ensure incarcerated persons do not create any problems during their workday and do not misappropriate any related tools that may be fashioned into weapons.
- *Yard officers:* While incarcerated persons are outdoors and engaged in physical exercise and socialization, there is the potential for problems, such as fights between different racial or ethnic groups; officers must be alert for breaches of security and order.
- *Tower officers:* Officers observe incarcerated persons who are in the prison yard while encased in an isolated, silent post high above the prison property, being vigilant for any outbreaks of violence or attempts to escape while incarcerated persons are outdoors.
- *Administrative building assignments:* Officers are responsible for providing security at all prison gates, places where incarcerated persons’ families come to visit, clerical work that involves the transfer of incarcerated persons, and so on.⁴⁸

Jail Personnel

Succinctly stated, jail personnel have many of the same duties as described for their prison counterparts; and, like their counterparts, jail employees must conduct themselves in an exemplary manner at all times while ensuring the care, custody, and control of incarcerated persons as per agency policies and procedures. Indeed, many of their duties mirror those of prison COs.

Jail administrators and employees need to be thoroughly trained in all aspects of their jobs. Jail workers have been criticized for being untrained and apathetic, although most are highly effective and dedicated. One observer wrote that

personnel is still the number one problem of jails. Start paying decent salaries and developing decent training and you can start to attract bright young people to jobs in jails. If you don’t do this, you’ll continue to see the issue of personnel as the number one problem for the next 100 years.⁴⁹

Training should be provided on the booking process; management and security of incarcerated persons; general liability issues; policies related to AIDS; problems of addiction in incarcerated persons (alcohol and other drugs); communication and security technology; and issues concerning suicide, mental health problems, and medication.

ISSUES OF PRISON GOVERNANCE

Next are brief discussions of some issues and challenges that can confront prison (and, often, jail) staff: sexual violence; the needs of incarcerated persons who are female, older adults, or mentally ill; drug use; gangs; and riots.

Sexual Violence and Coercion

People who live and work in correctional institutions obviously do not leave their sex drive (libido) at the institution's front gate when they enter. Physical violence is a constant possibility, and sexual violence must also be addressed. Sexual violence is defined by the World Health Organization as

any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise direct, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.⁵⁰

Incarcerated persons express their sexuality in many forms, with solitary or mutual masturbation at one end of the continuum, consensual homosexual behavior in the middle, and gang rapes at the other end. Factors that appear to increase sexual coercion rates include large population size (more than 1,000 incarcerated persons), understaffed workforces, racial conflict, barracks-type housing, inadequate security, and a high percentage of incarcerated persons convicted for crimes against persons.⁵¹

A study by Wolff and Shi examined sexual victimizations that were reported by nearly 7,000 incarcerated persons who were male.⁵² Their results were illuminating:

- On average, the victims were typically in their early 30s, African American, and had spent 2 years at their prison.
- The incarcerated person's cell was the most likely place of occurrence, and incarcerated persons were at greatest risk of sexual assault by other incarcerated persons between 6 p.m. and midnight.
- Incidents of sexual assault between two incarcerated persons most often involved attackers with a gang affiliation, the use of a weapon (typically a knife or homemade shank), and a repeat perpetrator.
- One third of the sexual assaults resulted in medical attention.⁵³

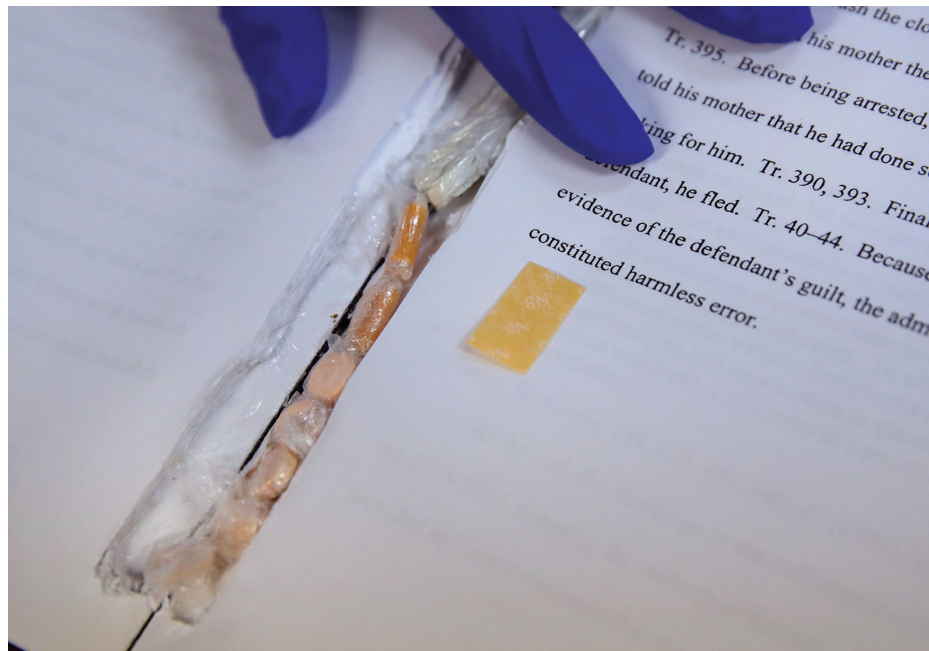
Several policy issues arise from these findings. First, an intervention plan should be employed that is targeted to high-risk prison areas and times of day and to incarcerated persons who are most likely to be victimized (e.g., those with mental illness; mental disabilities; or bisexual, transsexual, or homosexual orientations). At-risk individuals should be placed in single cells or protective units. Furthermore, prison administrators must attempt to prevent and prosecute sexual assaults as well as increase surveillance in vulnerable areas such as transportation vans, holding tanks, shower rooms, stairways, and storage areas.⁵⁴

The Prison Rape Elimination Act of 2003 (P.L. 108-79) mandated a new national data collection effort concerning the incidence and prevalence of sexual assault in correctional facilities. A decade later, the U.S. Department of Justice required that detention facilities not only give incarcerated persons multiple ways to report sexual abuse but also investigate every allegation. The latter regulation seems to be working: The number of reported sexual assaults in prisons skyrocketed, tripling in number from 2011 to 2015; this indicated to advocacy groups that more assaults were being reported, not actually occurring, because incarcerated persons trusted that the reporting and investigating systems work.⁵⁵

Drug Interdiction and Treatment

Every adult in our society is aware of the problems wrought by drug abuse. That problem is reflected within prison populations, where nearly half (46%) of incarcerated persons in federal prison and 14% of incarcerated persons in state prison are incarcerated for drug crimes.⁵⁶ Furthermore, offenders still manage to obtain illicit drugs during their incarceration, threatening the safety of incarcerated persons and staff while undermining the authority of correctional administrators, contradicting rehabilitative goals, and reducing public confidence.⁵⁷

What can be done about drug abuse in prisons and jails? The state of Pennsylvania realized that drug use was pervasive in several of its prisons. Six incarcerated persons had died from overdoses in a 2-year period, and assaults on correctional officers and incarcerated persons had become more common. To combat the problem, the state first adopted a zero-tolerance drug policy, the so-called Pennsylvania plan: Incarcerated persons caught with drugs were to be criminally prosecuted, and those testing positive (using hair testing) were to serve disciplinary custody time. Highly sensitive drug detection equipment was employed to detect drugs that visitors might try to smuggle into the prison, to inspect packages arriving in the mail, and to detect drugs that correctional staff might try to bring in. New policies were issued for movement of incarcerated persons and visitation, and a new phone system was installed to randomly monitor the calls of incarcerated persons.⁵⁸ The results were impressive. The state's 24 prisons became 99% drug free, the number of drug finds during cell searches dropped 41%, assaults on staff decreased 57%, assaults between incarcerated persons declined 70%, and the number of weapons seized during searches dropped from 220 to 76.⁵⁹



Drug use in correctional facilities is an ongoing and serious problem, one where interdiction is a challenge.

AP Photo/Charles Krupa

Women in Prison: Selected Rights and Challenges

The numbers speak to the large role that women now occupy in the nation's crime picture: About 108,000 women are being held in U.S. state and federal prisons⁶⁰ (and another 114,000 are locked up in local jails).⁶¹ The major area of difference between incarcerated male and female persons concerns their children because child-rearing tends to fall on a mother's shoulders. Added to the "pains" of imprisonment for women, therefore, are the further frustration, conflict, and guilt that arise when women are removed from their homes and are unable to care for their children.⁶² Furthermore, being pregnant upon being admitted into jail or prison will only add to those stressors.

Only seven states allow women who are pregnant at the time of sentencing to keep their infants with them inside a correctional facility after the baby's birth, and in most prisons, the length of the child's stay with the mother depends on the length of the mother's sentence.⁶³ About one fourth of all women in state prisons are incarcerated for either possessing or trafficking drugs—a higher proportion than for males and almost as high as the percentage of women serving time in state prisons for property crime.⁶⁴ Therefore, it is desirable for women incarcerated for such offenses to have access to drug treatment programs, to include detoxification, counseling, education, vocational courses, and group therapy.

Women held in state and federal prisons have other unique challenges—and constitutional rights, such as the following:

- Incarcerated women have different, and often more severe, health problems than incarcerated men. Many incarcerated women suffer from chronic and complex health conditions resulting from lives of poverty, drug use, family violence, sexual assault, adolescent pregnancy, malnutrition, and poor health care.⁶⁵
- Women have the right to be free from unreasonable searches and seizures of their property. However, the Supreme Court has found this right is severely limited in prison because of the security concerns of prison and incarceration. An exception, however, was found in *Jordan v. Gardner*,⁶⁶ where incarcerated women protested the prison policy of random full-body pat-down searches by male officers (see the accompanying You Be the . . . Judge and its corresponding endnote for the case and its outcome). Many of these incarcerated women had been severely sexually and physically abused by men in the past and experienced severe trauma and revictimization during these searches.
- Certainly, incarcerated women who are pregnant upon admission into prison or jail pose additional challenges. About 3% of women admitted into federal prisons, 4% of women entering state prisons, and 5% of women in local jails were pregnant at the time of their incarceration.⁶⁷ Many prisons thus assess the diet and nutrition, prenatal care, and work assignments for such incarcerated persons. In a related vein, although federal prisons (see Case Study 13.3) and some state prisons prohibit the use of restraints (known as shackling) with pregnant women while being transported to the hospital or during labor, in some states it is still common to do so.⁶⁸

Case Study 13.3

New Laws End Use of Restraints on Incarcerated Women Who Are Pregnant

Although the Federal Bureau of Prison (BOP) had adopted it as policy as early as 2008, a federal law was enacted in late 2018 as part of the First Step Act bans restraining incarcerated women in federal prison during pregnancy, labor, and postpartum recovery (unless the incarcerated person is considered a flight risk or an immediate threat to themselves or others). And because data concerning incarcerated women who are pregnant is sparse, the law also requires the BOP to count the number of incarcerated women who are pregnant, as well as keep track of the outcomes of the pregnancies, whether it is a live birth, miscarriage, or abortion.⁶⁹ In addition, at least 25 states and the District of Columbia have laws that prohibit or restrict the use of restraints on incarcerated women who are pregnant, while others have pending legislation concerning the same.⁷⁰ Finally, at least two federal courts have held that shackling an incarcerated woman during labor and delivery is a violation of her Eighth Amendment right against cruel and unusual punishment.⁷¹

Another conundrum has occurred where male correctional officers observe incarcerated women while in various states of undress: in bed, showering, or using toilet facilities. The U.S. Supreme Court stated in *Turner v. Safley* (1987) that prison regulations that restrict the rights of incarcerated persons must be substantially related to some legitimate concern of the prison.⁷² Beyond that, however, the lower federal courts differ on what expectation of privacy women enjoy in prison. Some courts have indicated that all prisoners have a right to be free from unnecessary viewing by correctional officers of the opposite sex while nude or performing private bodily functions in their cells, requiring that women thus be allowed to cover their windows as needed when undressing or using the toilet. Other courts, however, have merely suggested that prisons should allow women to cover their windows while dressing or using the toilet⁷³ or have suggested these incarcerated women be allowed to cover the window of their cells for privacy for brief time intervals.

YOU BE THE . . . JUDGE

"[U]se a flat hand and pushing motion across the [inmate's] crotch area. . . . [P]ush inward and upward when searching the crotch area and upper thighs of the inmate." All seams in the leg and the crotch area are to be "squeezed and kneaded." Using the back of the hand, the guard also is to search the breast area in a sweeping motion so that the breasts will be "flattened."

Thus read the training instructions as given to male prison guards at the Washington Corrections Center for Women in 1989, when the superintendent of the women's correctional facility instituted a pat-frisk policy permitting male guards to randomly search the clothed bodies of incarcerated women.

1. When challenged by incarcerated women, will this policy be allowed to stand on the grounds of institutional security?
2. Alternatively, do you believe it will be struck down by the courts as too intrusive?

The facts of this case, and its outcome, are provided in the Notes section at the end of the book.⁷⁴

The U.S. Constitution guarantees the right to be free from unreasonable searches and seizures of one's property. However, the Supreme Court has found this right is severely limited in prison, again, because of security concerns. Prisons may conduct a visual body cavity search (where the prisoner's ears, nose, mouth, anus, or vagina are inspected for contraband); the prison's interest in maintaining a secure facility is deemed to outweigh the incarcerated person's need for privacy. This interest includes body frisks, cell searches, and strip searches. However, the test for when a digital body cavity search may be performed is stricter because of its intrusive nature—a guard places their fingers into an incarcerated person's ears, nose, mouth, anus, or vagina. Here, prison officials must have a reasonable suspicion that is specific to the incarcerated individual, such as a suspicion an incarcerated person has a weapon.⁷⁵ Incarcerated women also have a right to be free from unwanted sexual activity. Any unwanted sexual attention an incarcerated woman experiences, like leering, pinching, patting, verbal comments, and pressure to engage in sexual activity, can be considered sexual assault or harassment.⁷⁶



A correctional officer keeps watch on incarcerated women in an indoor room at the Maricopa County tent jail.

David R. Frazier Photolibrary, Inc./Alamy Stock Photo

Incarcerated Persons With Mental Illness

The extent to which U.S. citizens encounter the criminal justice system and are suffering some form of mental illness is indeed catastrophic. As examples, the National Alliance on Mental Illness asserts that about 2 million people with serious mental illness are booked into jails each year; two thirds of women in prison—twice the percentage of men—have a history of mental illness; about one in four people shot and killed by police had a mental health condition; and 70% of youth in juvenile facilities have a diagnosable mental health condition.⁷⁷ Of course, many or most such incarcerated persons require a high level of security and are housed with other incarcerated persons who have committed equally serious offenses and who are serving equally long sentences.⁷⁸ Indeed, prisons and jails have been referred to as America's "new asylums."⁷⁹

Here is an example of such a condition: An incarcerated person in Virginia had bipolar disorder and was in a severely depressed state when he was arrested for a misdemeanor (he had spit on his landlord's face and threatened her husband with a sword). While in jail, he refused meals and medication, and soon, he was flooding his cell with toilet water and smearing feces on the walls. He was ordered to a state mental hospital, but no beds were available; soon after, he died in his cell. (A subsequent investigation by the state found that more than 400 people with mental illness had died in America's jails since 2010, although the actual number is likely much higher.)⁸⁰

The care and treatment of these incarcerated persons require resources, trained staff, and appropriate facilities. Yet that is a daunting task for prison staff because, according to the Treatment Advocacy Center, prison and jail administrators are neither trained nor equipped to handle such incarcerated persons, often do not have the medications needed to treat their conditions, and sometimes rely on solitary confinement to cope with the problem. Among the solutions offered by the Treatment Advocacy Center are the following: (1) eliminate barriers to treatment in the community; (2) reform laws so incarcerated persons can receive adequate mental health services while behind bars; (3) promote diversion programs such as mental health courts; and (4) develop release planning to increase the odds of recovery.⁸¹

Incarcerated Older Adults

Almost 22% of all persons admitted to state or federal prisons—about 265,000 in number—are age 50 or older, while about 5% are 65 or older;⁸² they are generally termed **incarcerated older adults**, and they tend to arrive at prison with more health problems or develop them during incarceration,⁸³ therefore costing twice as much to maintain as a younger incarcerated person. Indeed, such incarcerated persons have chronic health problems (e.g., arthritis, diabetes, cardiovascular diseases, failing eyesight and hearing, and other problems), memory and cognitive problems, mental health issues, and substance abuse and other criminal histories.

At minimum, such incarcerated persons must be guaranteed the right to dignity, to receive adequate health care and medical attention, and mental health and disability accommodations.⁸⁴

A unique program at the Northern Nevada Correctional Center in Carson City, called the Senior Structured Living Program (SSLP), is designed to work with such incarcerated persons. The program provides physical fitness, diversion therapy (arts, crafts, games, reading, poetry), music (a choir and band), wellness and life skills training, individual and group therapy, and community involvement (involving area social services, veterans' groups, Alcoholics Anonymous, and other groups). Volunteers also provide psychological, spiritual, and social support to the incarcerated persons. To enter the program, incarcerated persons must be at least 60 years of age and not be engaged in a full-time job or educational program. The prison medical department has witnessed a significant reduction in the incarcerated persons' overall medical complaints, overutilization of medical care, and use of psychotropic medications.⁸⁵

Prison Gangs

Gangs have long been one of the more formidable challenges that prison administrators must face. According to the National Institute of Justice, about 200,000 of the 1.5 million incarcerated persons in the United States are affiliated with gangs, which develop in prison for several reasons: solidarity, protection, and power. They often continue their operations outside of the penal system.

Typically, a prison gang consists of a select group of incarcerated persons who have an organized hierarchy and who are governed by an established code of conduct. They vary from highly structured to loosely structured associations, generally have fewer members than street gangs, are structured along racial or ethnic lines, and typically are more powerful in state correctional facilities than in the federal penal system.⁸⁶



A heavily tattooed inmate in California State Prison, Lancaster.

AFP Contributor/AFP/Getty Images

Furthermore, members of gangs returning to the community from prison often adversely affect neighborhoods and foment notable increases in crime, violence, and drug trafficking.⁸⁷ Prison gangs have also made it more difficult for prison officials to maintain order and discipline⁸⁸ and have wrought a rapid increase in violence among incarcerated persons—often related to increases in drug trafficking, extortion, prostitution, protection, gambling, and contract murders of incarcerated persons.⁸⁹ One study of prison gangs reported they account for half or more of all prison problems.⁹⁰ Members of gangs have a belligerent attitude toward all authority and its institutions when they enter prison; members are preoccupied with status and gang rivalry. They plan boycotts, strikes, and even riots. Despite administrative attempts to accommodate members of gangs in some prisons, they continue to pursue “loot, sex, respect, revenge, [and] will attack any outsider.”⁹¹

What can be done? Although several responses have been tested, there only seems to be one that works: removing members of gangs from the general population through the use of restrictive housing—administrative segregation and solitary confinement. Although controversial, this response will incapacitate highly disruptive incarcerated persons, normalize prisons, soothe tensions, and deter both misbehaving incarcerated persons and the prison population at large from disruptive behavior. Such confinement has been challenged in state courts, and incarcerated persons have prevailed in some cases;⁹² however, incarcerated persons are often placed in restrictive housing for disciplinary, protective, or administrative purposes, and members of gangs often fit one or more of those categories.⁹³

Going Global 13.1

As Bad as It Gets—Prison Gang Slaughter in Ecuador

A previous chapter described several of the world’s worst prisons, but an occurrence in Litoral Penitentiary in Guayaquil, Ecuador, in late 2021 certainly fits into that category as well. There, two gangs linked to international drug cartels—the Los Lobos and Los Choneros—battled over

control of the facility. The result was the deaths of at least 118 people; at least five were beheaded and 80 were injured. Images on social media showed dozens of bodies in scenes that looked like battlefields; the fighting involved firearms, knives, and bombs. Bodies were also found in the prison's pipelines. Ecuador's president declared a state of emergency and deployed police and soldiers inside the nation's prisons.⁹⁴

Coping With Riots

It is probably a tribute to correctional institution staff members in the United States that there are not more riots and disturbances, given that the correctional officers are vastly outnumbered as a rule, and the institutions essentially function with the consent and cooperation of the incarcerated persons. But institutions can go through cycles where the balance of power shifts, and incarcerated persons are dominant and staff is submissive, per studies by Lofgreen.⁹⁵ Consider the following examples of incidents in which incarcerated persons took over all or part of their institutions:

- Trouble had long been brewing at Delaware's Vaughn Correctional Center due to overcrowding, mismanagement, a culture of negativity, and bad relations between incarcerated persons and staff. In mid-2018, incarcerated persons took control of a building, killed one CO, and injured several others. An independent review found that prison administrators had long dismissed warnings of impending trouble. The 2-day riot resulted in several criminal trials and a \$7.55 million settlement on behalf of the slain officer and six staff members.⁹⁶
- At the Morey Unit of the Lewis Prison Complex in Buckeye, Arizona, in 2004, two incarcerated persons took two COs hostage and seized the unit's tower, triggering a 15-day standoff that remains the longest prison hostage situation in this nation's history.⁹⁷
- Also in 2004, a sheriff's negotiator won the release of three employees before a SWAT team stormed the Bay County Jail in Florida. Incarcerated persons had threatened to rape and cut off the body parts of a fourth hostage, a nurse. They had taken over the jail's infirmary, and one was holding a scalpel to the nurse's neck when the SWAT team and armed COs ended the 11-hour standoff.⁹⁸
- Permanently seared in the annals of corrections rioting are the horrific incidents at the Attica Correctional Facility in New York in 1971 (39 incarcerated persons and employees killed) and at the New Mexico State Prison in Santa Fe in 1980 (33 incarcerated persons dead).⁹⁹



The aftermath of the inmate riot at the Attica Correctional Facility in September 1971, in which 10 hostages and 29 inmates were killed and 89 other persons were seriously injured.

Santi Visalli Inc./Archive Photos/via Getty Images

As may be seen with these tragic events, jail and prison rioting and hostage taking are potentially explosive and perilous situations from beginning to end. Hostages always are directly in harm's way, and their jeopardy is continuous and uninterrupted until they are released and safely in the hands of authorities.¹⁰⁰ Some riots involving incarcerated persons and hostage situations come as a complete surprise, whereas others flow from a precipitating event or some type of a “spark.”

Corrections hostage-taking events can involve any individuals, employees, visitors, or incarcerated persons held against their will by an incarcerated person seeking to escape, gain concessions, or achieve other goals, such as publicizing a particular cause. They can be planned or impulsive acts,¹⁰¹ and they can involve one hostage or hundreds.¹⁰² It is critical that both prisons and jails have a coordinated plan to address such incidents, not only to keep a small disturbance from escalating into a full-fledged riot but, more importantly, to prevent unnecessary deaths.¹⁰³

The earlier discussion in this chapter concerning the staff's observing when things “just don't look right” (JDLR) can be helpful in preventing riots.

CONSTITUTIONAL RIGHTS OF THE INCARCERATED PERSON

As will be seen in the following discussion, the rights and remedies available to incarcerated persons have expanded greatly over the past 150 years. Prison and jail administrators must know—and apply—the law in order to be in compliance with the Constitution and federal court decisions.

Demise of the Hands-Off Doctrine

Historically, the courts followed a **hands-off doctrine** regarding prison administration and **rights of incarcerated persons**, deeming incarcerated persons to be “slaves of the state.” The judiciary, recognizing that it was not trained or knowledgeable in penology, allowed wardens the freedom and discretion to operate their institutions without outside interference, while being fearful of undermining the structure and discipline of the prison.

All that has changed, and the era of the **hands-on doctrine**, beginning in the mid-1960s, brought about a change of philosophy in the courts regarding the rights of incarcerated persons. Incarcerated persons now retain all the rights of free citizens except those restrictions necessary for their orderly confinement or to provide safety in the prison community.

Selected Court Decisions

What follows is a brief discussion of selected major U.S. Supreme Court decisions that spelled the demise of the hands-off era, while also vastly improving the everyday lives of incarcerated persons in prison and jail and reforming correctional administration.

A “Slave of the State”

The 1871 case of *Woody Ruffin* serves as an excellent beginning point for an overview of significant court decisions concerning the rights of incarcerated persons. Ruffin, who was incarcerated in Virginia, killed a correctional officer while attempting to escape and later challenged his conviction; the Virginia Supreme Court stated Ruffin, like other incarcerated persons, had “not only forfeited his liberty, but all his personal rights.” The court added that incarcerated persons were “**slaves of the state**,” losing all their citizenship rights, including the right to complain about living conditions (*Ruffin v. Commonwealth*, 1871).¹⁰⁴

Legal Remedy and Access to the Courts

In *Cooper v. Pate* (1964), the Supreme Court first recognized the use of Title 42 of U.S. Code Section 1983 (discussed in earlier chapters) as a legal remedy for incarcerated persons.¹⁰⁵ An incarcerated person at Illinois State Penitentiary sued prison officials claiming he was unconstitutionally punished by being placed in solitary confinement and being denied permission to purchase certain religious materials. The Supreme Court decided he was entitled to purchase the articles—and he could use Section 1983 to sue the prison administration.

Another significant case involved the right of access to the courts. Here, an incarcerated person in Tennessee was disciplined for assisting other incarcerated persons in preparing their legal writs, which violated a prison regulation. The Court acknowledged that “writ writers” are sometimes a menace to prison discipline, and their petitions are often a burden on the courts. However, because the state provided no “reasonable alternative” for illiterate or poorly educated incarcerated persons to prepare appeals, the Supreme Court said incarcerated persons could not be prevented from giving such assistance to other incarcerated persons (*Johnson v. Avery*, 1969).¹⁰⁶ In 1977, in another court-access decision, the Court said incarcerated persons have a constitutional right to adequate law libraries or assistance from persons trained in the law. Alternative methods for providing such access included training incarcerated persons as paralegals, using paraprofessionals and law students to advise incarcerated persons, hiring lawyers on a part-time consultant basis, and having voluntary programs through bar associations, where lawyers make visits to the prisons to consult with incarcerated persons (*Bounds v. Smith*, 1977).¹⁰⁷

First Amendment: Freedom of Religion and Mail Communications

A landmark 1972 case clarified the right of incarcerated persons to exercise their religious beliefs. The plaintiff, a Buddhist, was not allowed to use the prison chapel and was placed in solitary confinement on a diet of bread and water for sharing his religious material with other incarcerated persons. The Supreme Court held that incarcerated persons with unconventional religious beliefs must be given a reasonable opportunity to exercise those beliefs (*Cruz v. Beto*, 1972).¹⁰⁸

The Supreme Court has also looked at prison mail censorship regulations that permitted authorities to hold back or to censor mail to and from incarcerated persons. The Court based its ruling not on the rights of the incarcerated person but, instead, on the *free-world* recipient’s right to communicate with the incarcerated person, either by sending or by receiving mail. The Court said mail censorship, if it is to be done, must be shown to enhance security, order, and rehabilitation; it must not be used simply to censor opinions or other expressions (*Procunier v. Martinez*, 1974).¹⁰⁹

Eighth Amendment: Search and Seizure

Estelle v. Gamble (1976) was the first major prison medical treatment case decided by the Supreme Court.¹¹⁰ Here, the Court coined the phrase “deliberate indifference,” which is where the serious medical needs of incarcerated persons involve the unnecessary and wanton infliction of pain. An incarcerated person in Texas claimed he received cruel and unusual punishment due to inadequate treatment of a back injury sustained while he was engaged in prison work. The Court found that, because medical personnel saw him on 17 occasions during a 3-month period and failed to treat his injury and related problems, such deliberate indifference to his medical needs constituted the “unnecessary and wanton infliction of pain.”

Fourteenth Amendment: Due Process

The Supreme Court’s decision in *Wolff v. McDonnell* (1974) is significant because, for the first time, the Court acknowledged that incarcerated persons are entitled to certain due process rights during prison disciplinary proceedings.¹¹¹ McDonnell and other incarcerated persons at a Nebraska prison alleged, among other things, that disciplinary proceedings at the prison violated due process. The Court said, “There is no iron curtain drawn between the Constitution and the prisons of this country,” that “a prisoner is not wholly stripped of constitutional protections.” This statement has become known as the Court’s “**iron curtain**” **speech**. Incarcerated persons were given several due process rights:

- Advance written notice of charges
- A written statement as to the evidence being relied on for the disciplinary action
- Ability to call witnesses and to present documentary evidence in the incarcerated person’s defense
- Use of counsel substitutes (e.g., a friend or staff member) if the incarcerated person is illiterate or when complex issues require such assistance
- An impartial prison disciplinary board

YOU BE THE . . . CRIMINAL JUSTICE POLICYMAKER

For nearly a half century, multiple murderer Charles Manson, who died at age 83 in November 2017, personified a horrifying time in American culture, becoming notorious in 1969 when his followers killed seven people, including pregnant actress Sharon Tate. But even Manson had committed relationships and nearly got married while in prison.

Indeed, Manson was issued a marriage license in late 2014 to wed 26-year-old Afton Burton (nicknamed “Star”), who said she loved Manson and even left her Illinois home in order to live near Manson’s place of incarceration, the California State Prison, Corcoran. (Manson later canceled the wedding plans after learning that Star planned to put his corpse on display after his death and charge people money for the right to look at it.)

Criminologist James Alan Fox of Northeastern University characterizes such individuals as Star as “killer groupies” and notes there is even a clinical label for them: *hybristophilia*, where someone is sexually aroused or attracted to a person who has committed a particularly violent crime. Some such groupies, Fox believes, are attracted to their idol’s controlling, manipulative personalities, or they attempt to prove their lover is innocent or a victim of injustice. Others wish to break through their lover’s vicious façade with warm feelings, while still others merely wish to acquire the glamour and celebrity status that killer groupies find exciting.

1. Do you believe incarcerated persons such as Manson and others mentioned—incarcerated for heinous, capital crimes—be permitted to marry?
2. If you believe not, then should incarcerated persons convicted of nonviolent crimes (i.e., property or drug offenses) be allowed to do so?¹¹²

PREPARATION FOR REENTRY AND AFTERCARE

Like one who is returning home after a long hospital stay for serious illness, individuals who return to their homes after release from prison will be faced with many challenges. This process, known as **reentry and aftercare**, involves providing services to, and supervision for, paroled incarcerated persons who are about to reintegrate into the community. This population often has multiple deficiencies and problems: little education, poor work record and thus few job prospects, substance abuse or drug dependency, mental and physical health issues, few positive role models, and so on. It is no surprise, then, that reoffending rates upon release are high: As mentioned in an earlier chapter, nearly two thirds of all released incarcerated persons will be rearrested within 5 years. Thus, it is imperative that prison be viewed as an opportunity to improve the incarcerated person’s skills, treat their addictions, improve their job skills and education, and so on.¹¹³ Evidence suggests that correctional programming should include adult drug courts, prison therapeutic communities, drug treatment, behavioral treatment, industry programs, basic adult education, and employment and vocational training.¹¹⁴

Then, as the individual who is paroled reenters the community, a comprehensive program should be in effect to monitor and assist the individual with finding housing and employment, reconnecting with family and friends, addressing any drug and alcohol problems, avoiding reoffending, and so on. Some halfway houses assist with these activities—as do reentry courts, which review the incarcerated person’s plans and progress, oversee the incarcerated person’s reentry, and see they participate in the individualized array of transitional programs that are to be attended.¹¹⁵ Studies have shown individuals paroled who have completed both the prison-based and the ensuing aftercare programs have fewer substance abuse problems and rearrests, compared with an untreated comparison group.¹¹⁶

IN A NUTSHELL

- Philip Zimbardo set up a mock prison experiment to try to explain the abusive behaviors that had been going on in prisons
- Prison expert John DiIulio Jr. stated that incarcerated persons are not to suffer pains beyond the deprivation of liberty; confinement itself is the punishment. Furthermore, regardless of the crime, even the most heinous offender is to be treated with respect and dignity.

- Gresham Sykes described the “pains of imprisonment” as deprivations of liberty, goods and services, heterosexual relationships, autonomy, and security.
- Incarcerated persons can become “prisonized,” whereby they adopt the morals and values of the prison culture.
- Some wardens believe there is simply never enough money to accomplish all four goals of punishment: to *incapacitate* and *rehabilitate* incarcerated persons and to provide *deterrence* to crime and *retribution*. Choices need to be made—bearing in mind that the warden must, first and foremost, provide for incapacitation.
- Astute prison leadership will develop a JDLR mentality—knowing when things “just don’t look right.” It refers to having a sense of what’s going on with the incarcerated persons—“reading the yard”—and thus knowing when problems are about to erupt.
- Prison administrators and staff must have plans in place for dealing with potential (and often existing) problems, such as incarcerated persons’ sexual violence, drugs, gangs, and riots.
- Women who are in prison pose unique problems in terms of overall health, substance abuse problems, and special needs in terms of the right to privacy and the Fourth Amendment (i.e., the need to be searched). A new federal law and statutes in many states prohibit their being shackled before and during childbirth.
- The populations of incarcerated persons with mental illness poses special needs in terms of treatment and security. Similarly, members of gangs inside pose unique problems and challenges for overcoming their influence.
- Incarcerated persons who are older adults are twice as expensive to house and treat, and they deserve human dignity; special programs have been developed to address their needs.
- Prisons and jails are dangerous settings, and rioting and hostage-taking are potentially explosive and perilous situations. It is critical that both prisons and jails have a coordinated plan to address such incidents.
- It is essential that correctional programs (e.g., drug and behavioral treatment, adult employment and education) exist to assist incarcerated persons prior to their reintegration into the community.
- Historically, the courts followed a hands-off policy regarding prisons and the rights of incarcerated persons; the hands-on era, beginning in the mid-1960s, brought about a change of philosophy in the courts regarding the rights of incarcerated persons. Incarcerated persons now retain all the rights of free citizens except those restrictions necessary for their orderly confinement or to provide safety in the prison community.

KEY TERMS

Correctional officers (p. 315)	Prisonization (p. 311)
Hands-off doctrine (p. 326)	Reentry and aftercare (p. 328)
Hands-on doctrine (p. 326)	Rights of incarcerated persons (p. 326)
“Iron curtain” speech (p. 327)	“Slaves of the state” (p. 326)
Incarcerated older adults (p. 323)	Solitary confinement (p. 314)
JDLR (p. 316)	

REVIEW QUESTIONS

1. What did Philip Zimbardo set out to prove in his mock prison experiment? What was the outcome?
2. What are the constitutional conditions of confinement, and what are the deprivations of prison life that are said to be the “pains” of imprisonment?

3. How does an incarcerated person become “prisonized”?
4. What kinds of factors make prisons and jails dangerous in nature, and what indicators or conditions might foreshadow a riot or another type of major incident?
5. How do jails differ from prisons in terms of purpose and types of incarcerated persons?
6. What are the duties of wardens? Correctional officers?
7. What are some of the unique aspects of women being in prison in terms of their deprivations and health (including pregnancies)? Of older adult, mentally ill, drug-addicted, and gang-affiliated incarcerated persons?
8. What is the nature and extent of sexual violence in prisons? How is federal law attempting to reduce such victimization?
9. What kinds of correctional programming can assist with reintegration of incarcerated persons into the community?
10. What major federal court decisions have been rendered concerning the rights of incarcerated persons?

LEARN BY DOING

1. Having successfully run a “tough on crime/balance the budget” campaign, your state’s newly elected governor sends all prison wardens a letter. It states that prisons should not be “coddling” incarcerated persons, and he is considering a new policy that would end all “expensive and wasteful programs” that have long existed for mentally ill, substance-abusing, and older-adult incarcerated persons. As a warden, you are asked to respond to his proposal. How will you reply?
2. The prison warden’s associate director for security has been directed to prepare an immediate plan for dealing with the following situation:
Incarcerated persons in the local prison are stocking up on long-term items (e.g., canned goods) in the commissary and banding together more than usual throughout the institution by racial groupings; furthermore, incarcerated persons tend to be seen standing in or near doorways, as if preparing for a quick exit. Over the past several months, the incarcerated persons have become increasingly unhappy with their conditions of confinement—not only concerning the food but also with the increasing numbers of assaults and gang attacks. The staff members, for their part, have also become increasingly unhappy, particularly with their low salaries and benefits, perceived unsafe working conditions and attacks on officers, prison overcrowding, and a trend toward greater amounts of contraband being found in the cell blocks. They demand the prison administration ask the parole board to grant more early releases and the courts to give more consideration to house arrest and electronic monitoring to ease the situation.

What sort of plan should the associate warden prepare? Include in your response the critical issues that should be dealt with immediately, what steps you would take to defuse the potential for a riot, and measures that might be adopted later, in the long term, concerning staff morale and demands.



©iStockphoto.com/monkeybusinessimages

14

CORRECTIONS IN THE COMMUNITY

Probation, Parole, and Other Alternatives to Incarceration

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 14.1** Explain why the criminal justice system uses alternatives to incarceration.
- 14.2** Describe the definitions and origins of probation and parole, as well as the differences between them.
- 14.3** Identify the eligibility and rights accorded to people serving terms of probation or parole.
- 14.4** Describe the rationale behind the effectiveness of probation and parole.
- 14.5** Explain the functions of probation and parole officers—and the impact of high caseloads.
- 14.6** Explain the purposes and functions of several intermediate sanctions and alternatives to incarceration.
- 14.7** Provide an overview of the risk-need-responsivity (RNR) model for addressing reoffending.
- 14.8** Explain the rationale that underlies the use of restorative justice.

ASSESS YOUR AWARENESS

Test your knowledge of probation and parole by responding to the following seven true–false items; check your answers after reading this chapter.

- 1. Probation began with the voluntary work of a simple Boston shoe cobbler.
- 2. Probation, because it is more costly than prison, is used sparingly in the United States.
- 3. An incarcerated person placed on parole does not serve any time in prison or jail and serves the entirety of their sentence in the community.
- 4. A person may have their probation revoked and then be sent to prison for behaviors such as using alcohol, violating curfew, and associating with other known persons who have offended.
- 5. Persons whose probation or parole status might be revoked, and who thus might be sent to prison, enjoy no legal rights or benefits.
- 6. In addition to probation and parole, other alternatives to prison include house arrest, electronic monitoring, and boot camps.
- 7. Restorative justice places emphasis on giving victims a voice and placing greater accountability on the person who has offended.

Answers can be found on page 401.

Several homicides in Denver, Colorado, have been tied to persons who were serving their sentences in the community rather than behind bars.¹ Warren Simpson Jr. was on probation, even after violating his probation conditions and being arrested for several new crimes, when he robbed a bank and then later killed an acquaintance, 54-year-old Robert Turner, in October 2021. Devin Franklin was also on probation for eluding police and carrying a concealed weapon in Texas when he was arrested in June 2020 for the drive-by shooting death of 19-year-old Tayvion Washington.

Angel Manzanares was on parole and in downtown Denver when he fatally shot 30-year-old Fred Sailas in November 2021. Cornelius Haney was also on parole following his robbery conviction, having been granted an early release due to his medical vulnerability to the COVID-19

virus, when he shot and killed 21-year-old Heather Perry just 3 weeks after being let out of prison in May 2020. Steven Young was a parolee also convicted of robbery who fatally shot 41-year-old John Cyprian in June 2020 in the nearby city of Aurora. Before Young was apprehended by police, he shot and killed the sole eyewitness to his crime, 32-year-old Charly Lewis. A cyclist found Lewis, a young mother, dead with a gunshot wound to her head in a Denver alley.

When a person commits a crime while serving a sentence in the community (e.g., while under probation or parole supervision), we are naturally critical of the decisions made by the judge or parole board members involved in the case. If you had been the judge or parole board member in any of these cases, would you have allowed these individuals to serve their sentence in the community? How much money should we spend to punish persons who have committed crimes, and what are our alternatives? As you read this chapter, think about how justice can be achieved (or not) when individuals are sentenced to corrections in the community.

INTRODUCTION

“I would like to use my college degree to help people who have gotten into trouble. Should I work in probation or parole? Should I work with adults or juveniles? And what kind of work would I be doing?” These questions have a ring of familiarity to most if not all criminal justice professors, as many students today seek to make their contributions to society by working with and trying to reform persons who are experiencing the criminal justice system.

The word “probation” is probably familiar to most college and university students. If they don’t “make the grades,” they can be placed on academic probation; if their athletic programs fail to adhere to the rules of the National Collegiate Athletic Association (NCAA), the institution and its athletic program(s) can be placed on probationary status. The common thread here is that each group or individual is served warning that it had better change its behavior or more severe penalties will follow. And so it is with persons who have committed crimes—most of whom are sentenced to a *community-based* form of punishment, with probation being a commonly used form.

This chapter examines probation, parole, and a variety of other measures that constitute a broad array of alternatives to incarceration. It begins by looking at both philosophical and economic arguments for having alternatives to incarcerations, followed by discussions of the origins and contemporary aspects of probation and parole. Included is discussion of the rights of persons on probation and parole when the state wishes to remove their freedom and send them to prison, as well as the functions of probation and parole officers—including the impact of high caseloads and the debate concerning whether these officers should be armed. The chapter then discusses intermediate sanctions. These alternatives to incarceration may be lesser known but are still quite beneficial to offenders and help to decrease prison and jail populations; they include intensive supervision (of probation), house arrest, electronic monitoring, shock incarceration/boot camps, day reporting centers, halfway houses, and furloughs. Following a review of the risk-need-responsivity (RNR) model, which is used to assess what programs to use with persons convicted of offenses to stop the cycle of reoffending and reincarceration, is a discussion of a relatively new movement in criminal justice: restorative justice.

WHY ALTERNATIVES TO INCARCERATION?

Most persons under correctional supervision are on probation or parole—together termed **community corrections**. Probation and parole alone represent a significant component of the U.S. criminal justice system, with about 3.9 million adults now being supervised in the community; about 3 million of these adults are on probation in lieu of incarceration, and the remainder are on early release from incarceration but under conditions as per terms of their parole.²

The leading alternative to incarceration is **probation**, and it is defined as the court’s allowing a convicted person to remain at liberty in the community while being subject to certain conditions and restrictions on their activities. The United States is not soft on crime, but there are several valid reasons

for using **alternatives to incarceration**. In addition to being far less expensive, it allows the person convicted of an offense

- to remain in the community, which has a greater rehabilitative effect than incarceration, thereby reducing recidivism (repeat offending).
- to take greater advantage of treatment or counseling options.
- to avoid the “pains” and negative effects of imprisonment.
- to maintain ongoing ties with family, employment, and other social networks.

However, to be effective, a real alternative to incarceration needs to have three elements: It must incapacitate persons who have committed crimes enough so that it is possible to interfere with their lives and activities to make committing a new offense extremely difficult; it must be unpleasant enough to deter them from wanting to commit new crimes; and it must provide real and credible protection for the community.³

More than a half century ago, the President’s Commission on Law Enforcement and Administration of Justice (1967) endorsed community-based corrections—the use of probation and parole—as a humane, logical, and effective approach for working with and changing persons convicted of crimes. According to the commission, that includes

building or rebuilding solid ties between the offender and the community, obtaining employment and education, securing in the large sense a place for the offender in the routine functioning of society. This requires . . . efforts directed toward changing the individual offender (and) mobilization and change of the community and its institutions.⁴

The demand for prison space has created a reaction throughout corrections.⁵ With the cost of prison construction now exceeding a quarter of a million dollars per cell in maximum-security institutions, cost-saving alternatives are becoming more attractive, if not essential.

The realities of prison construction and overcrowding have led to a search for intermediate punishments.⁶ This in turn has brought about the emergence of a new generation of programs, making community-based corrections, according to Barry Nidorf, a “strong, full partner in the fight against crime and a leader in confronting the crowding crisis.”⁷ Economic reality dictates that cost-effective measures be developed, and this is motivating the development of intermediate sanctions.⁸

ORIGINS OF PROBATION AND PAROLE

The concepts of probation and parole have long and interesting histories.

Probation Begins: The Humble Shoe Cobbler

Although contemporary probation has roots dating to biblical times,⁹ its history in the United States dates to the 19th century. “Judicial reprieve” was used in English courts to serve as a temporary suspension of sentence to allow the defendant to appeal to the Crown for a pardon. In the United States, the suspended sentence was used as early as 1830 in Boston and became widespread in American courts, even though there was no statutory provision for it. By the mid-19th century, though, many courts were using a judicial reprieve to suspend sentences.¹⁰ This posed a legal question: Could judges suspend sentences wholesale, after trials that were scrupulously fair, simply to give the defendant a second chance?¹¹

In 1916, the U.S. Supreme Court, in a decision affecting only the federal courts, held that judges did not have the discretionary authority to suspend sentences. However, the Court ruled that Congress could authorize the temporary or indefinite suspension of sentences; this led to the development of probation statutes.¹²

John Augustus, a Boston shoe cobbler, is credited as being the “father of probation.” In 1841, Augustus appeared in court on behalf of a drunkard; as Augustus later explained, “I was in court one

morning . . . in which the man was charged with being a common drunkard. He told me that if he could be saved from the House of Correction, he never again would taste intoxicating liquors; I bailed him, by permission of the court.”¹³ During his first year of service as an unpaid, volunteer probation officer, Augustus assisted 10 drunkards. By Augustus’s own account, he eventually bailed “eleven hundred persons, both male and female.”

Augustus performed several tasks that are reminiscent of modern probation. He investigated each case—inquiring into the character, age, and influences of the persons who committed offenses—and kept careful records of each person’s progress. His probation work soon caused him to fall into financial difficulties, however, requiring his friends’ monetary assistance. Augustus died in 1859.

By 1869, the Massachusetts legislature had required that a state agent be present if court actions might result in the placement of a child in a reformatory (the forerunner of today’s caseworkers). Then, in 1878, Massachusetts passed the first probation statute, mandating an official state probation system with salaried probation officers. Other states quickly followed suit:

- By 1900, Vermont, Rhode Island, New Jersey, New York, Minnesota, and Illinois passed probation laws.
- By 1910, 32 more states passed legislation establishing juvenile probation.
- By 1930, juvenile probation was legislated in every state except Wyoming.¹⁴

Parole Origins: Alexander Maconochie

The word “parole” stems from the French *parol*, or “word of honor,” which was a means of releasing prisoners of war who promised not to resume arms in a current conflict.¹⁵ One writer cited the year 1840 as one in which “one of the most remarkable experiments in the history of penology was initiated.”¹⁶

In that year, Alexander Maconochie became superintendent of the British penal colony on Norfolk Island, about 930 miles northeast of Sydney, Australia. He began a philosophy of punishment based on reforming incarcerated persons: The incarcerated person was to be punished for the past while being trained for the future. Maconochie advocated open-ended (“indeterminate”) sentences. His system worked, although it was harshly ridiculed by some Australians as “coddling criminals.”

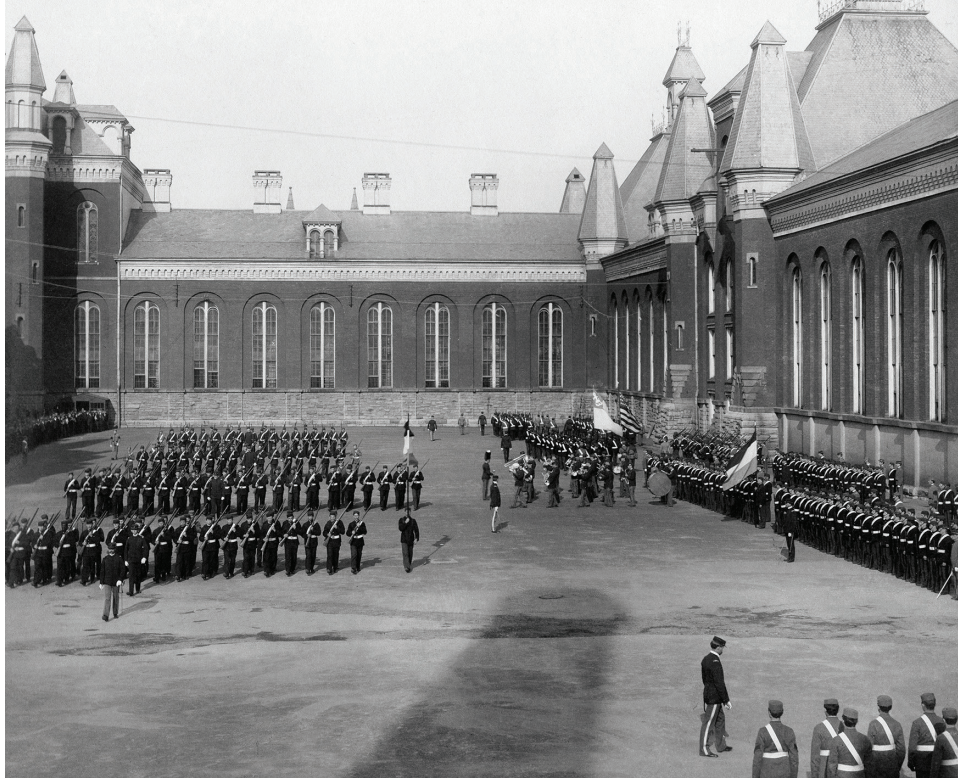
Returning to England in 1844, Maconochie began writing and speaking of his experiment. One of those impressed by Maconochie was Walter Crofton, who in 1854 became director of the renowned Irish system of penal management. Crofton implemented, among many other things, a “ticket of leave” system, allowing incarcerated persons to be conditionally released from prison, to be supervised by the police. Crofton recommended a similar system for the United States.

In 1876, when Zebulon Brockway was appointed superintendent of the Elmira Reformatory in New York, he drafted a statute providing for indeterminate sentences. Continued good behavior by incarcerated persons resulted in early release—America’s first parole system. Incarcerated persons who were paroled remained under the jurisdiction of reformatory authorities for an additional 6 months, during which the parolee was required to report on the first day of every month to an appointed guardian and provide an account of their conduct and situation (a decade after Elmira began operations, New York opened three women’s reformatories). This system was copied by other states; it was expanded further by the Great Depression, which abolished economic exploitation of convict labor.¹⁷ Once introduced in the United States, parole spread rapidly. In doing so, it survived an early series of constitutional challenges.¹⁸ A 1939 survey reported that, by 1922, parole existed in 44 states, the federal system, and Hawaii.¹⁹ Mississippi adopted a parole law in 1944, becoming the last state to do so.

A few reasons have been offered for the relatively rapid spread of parole legislation:

- There was general dissatisfaction with the determinate sentencing provisions of the time, and parole was seen as a response to some of the criticisms: Parole would promote reformation of incarcerated persons by providing an incentive to change; at the same time, it would serve as a means of equalizing disparate judicial sentences.²⁰

- Release before sentence expiration was already an aspect of most prison systems—through “good-time” deductions, which began in New York in 1817, and through gubernatorial clemency, which was used far more extensively than today.
- Parole was believed useful for enforcing prison discipline and for controlling prison population levels.²¹



Inmates on parade in Elmira's yard.

©ullstein bild/ullstein bild/Getty Images

PROBATION AND PAROLE TODAY

The following discussion distinguishes the eligibility and rights for persons placed on probation or beginning parole.

Probation: Eligibility and Legal Rights

As noted earlier, today about 3 million adults are on probation in lieu of being incarcerated. As seen in Table 14.1, more than half (69%) of those persons were convicted for committing a felony; furthermore, about one fourth of them committed a drug offense, while another 24% committed a property offense, and 25% committed a violent offense.²²

Judges consider several factors when evaluating the eligibility of an incarcerated person for probation:

- The nature and seriousness of the current offense
- Whether a weapon was used and the degree of physical or emotional injury, if any, to the victim
- Whether the victim was an active or a passive participant in the crime
- The length and seriousness of the incarcerated person's prior record
- The incarcerated person's previous success or failure on probation
- The incarcerated person's prior incarcerations and success or failure on parole²³

TABLE 14.1 ■ Characteristics of Adults on Probation, 2005 and 2020

Characteristic	2005	2020
Sex	100%	100%
Male	77	75
Female	23	25
Race/Hispanic origin	100%	100%
White	54	54
Black/African American	29	30
Hispanic/Latino	13	13
American Indian/Alaska Native	1	1
Asian	1	1
Native Hawaiian/other Pacific Islander	<1	1
Two or more races	<1	1
Status of supervision	100%	100%
Active	72	70
Residential/other treatment program	1	1
Inactive	9	4
Supervised out of state	6	3
Financial conditions remaining	—	2
Absconder	10	9
Warrant status	2	5
Other	<1	6
Type of offense	100%	100%
Felony	50	69
Misdemeanor	49	30
Other infraction	1	1
Most serious offense	100%	100%
Violent	18	25
Property	23	24
Drug	25	26
Public order (DUI/traffic)	19	13
Other	14	11

Note: Detail may not sum to total due to rounding. Estimates are based on most recent data and may differ from previously published statistics. Characteristics are based on persons on probation with a known type of status.

—Information not available.

Source: Danielle Kaebler, "Probation and Parole in the United States, 2020," *Bureau of Justice Statistics*, December 2021, <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>.

Although a decision is made for the person committing an offense to remain free and avoid incarceration, they must still abide by certain conditions that the court and probation officers will put in place to govern their behavior. If the person placed on probation does not comply with those conditions, there are two possible types of violations that might be committed—**technical violations** or **substantive violations**:

- *Technical violations:* These may include failing to pay court costs or fines, missing a probation meeting, using alcohol, violating curfew, associating with other known persons who have committed offenses, failing to submit to a mandatory drug test, failing a drug test, failing to complete community service, engaging in out-of-state travel, or changing address without permission.
- *Substantive violations:* These occur when the person on probation commits a new criminal offense.

The following are several factors the judge and prosecutor may consider when assessing a probation violation:

- The seriousness and nature of the probation violation
- The history of previous probation violations
- New criminal activity surrounding the probation violation
- Aggravating and mitigating circumstances of the probation violation
- The probation officer's and/or probation department's view of the probation violation
- The probation violation with respect to the probation term (whether it occurred at the beginning, middle, or end of the probationary term)

About 22% of people on probation exit probation supervision each year for some untoward reason—for example, they were incarcerated for a new crime, violated a condition of supervision, or absconded.²⁴ The violation of probation is a serious offense, can be a felony, and can result in a judge's revoking probation. As soon as a probation violation occurs, an arrest may soon follow, and the defendant may be ordered to appear in court for a probation violation hearing. If a judge revokes probation, state laws often allow the judge to impose the maximum penalty for the charge.

Case Study 14.1

Terms and Conditions of Probation

The following are examples of mandatory and standard conditions of probation and community supervision in the District of Nevada.

Mandatory Conditions of Probation

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess or use a controlled substance.
3. You must cooperate in drug testing and the collection of DNA as directed by the probation officer.
4. You must comply with the requirements of the Sex Offender Registration and Notification Act.
5. You must participate in an approved program for domestic violence.
6. You must make restitution and pay the assessment imposed and pay any imposed fines.
7. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

Standard Conditions of Supervision

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment and report to the probation officer as instructed.
2. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
3. You must answer truthfully the questions asked by your probation officer.
4. You must live at a place approved by the probation officer and notify the officer at least 10 days before any changes in residence.
5. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision they observe in plain view.
6. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so.
7. You must not communicate or interact with someone you know is engaged in criminal activity.
8. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
9. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

Source: For brevity, this list is adapted and condensed from the original; for the complete listing of rules, see <https://www.probationinfo.org/wp-content/uploads/2021/05/District-of-Nevada-Restrictions.pdf>.



One of the typical conditions placed on a person on probation is that they submit to mandatory drug tests.

iStock.com/Hailshadow

Certain rights have been afforded persons on probation who are about to undergo a probation **revocation** hearing. First, in *Mempa v. Rhay* (1967), the U.S. Supreme Court held that such hearings are a “critical stage” where substantive rights could be lost and that the Sixth Amendment therefore required

the presence of counsel to help in “marshaling facts.”²⁵ Later, in 1973 the Supreme Court decided *Gagnon v. Scarpelli*, in which a person on probation had his probation revoked without a hearing; the court determined that person on probation had certain due process rights, including the following:²⁶

- Notice of the alleged violation
- A preliminary hearing to determine probable cause
- The right to present evidence
- The right to confront adverse witnesses
- A written report of the hearing
- A final revocation hearing

In 2019, the Supreme Court ruled in *United States v. Haymond* that person on probation cannot be sentenced to new prison terms for violations of their conditions of probation, even if the violation involves the commission of a crime, unless a new trial is held and a jury finds the defendant guilty beyond a reasonable doubt.²⁷

YOU BE THE . . . JUDGE

After 33 days of testimony from 60 witnesses and 400 pieces of evidence, a jury acquitted 25-year-old Casey Anthony in July 2011 on charges of first-degree murder in the June 2008 death of her 2-year-old daughter, Caylee. After lying many times to detectives and appearing culpable under the evidence, Anthony was charged with killing Caylee by covering her mouth with duct tape (her body was found 6 months later in woods near Anthony’s home). The defense maintained that Caylee had accidentally drowned while in her parents’ care and that Anthony’s father attempted to cover up the death.

After acquittal for murder (the actual cause of Caylee’s death was never established, nor was Anthony’s DNA found on her daughter’s skeletal remains, among other evidentiary shortcomings), the only convictions that remained were for Anthony’s lying to detectives about her actions and what happened to the child. The task then facing the judge was to determine whether and how to sentence Anthony. In the end, Anthony was given 1-year’s probation for a 2010 check fraud conviction, which she served in an undisclosed Florida location. The judge who presided over the trial later stated he believed Anthony did, in fact, kill Caylee, by accidentally administering too much chloroform to sedate her (during the trial, evidence showed that Anthony researched the use of chloroform, which was once used as an inhaled anesthetic during surgery).

1. Had you been the judge in this case, would you have granted probation to Anthony?
2. Why did this case, relative to most, receive such extraordinary public attention?
3. Do you believe Anthony would pose a danger to other children she might bear or with whom she might otherwise be associated in the future?
4. What elements might have contributed to Anthony’s acquittal?

Sources: For more background and legal analysis of the case, see David Lat, “Trials and Error: The Casey Anthony Case,” *Above the Law*, June 1, 2012, <http://abovethelaw.com/2012/06/trials-and-error-the-casey-anthony-case/?rf=1>.

Parole: Eligibility and Legal Rights

Table 14.2 shows how parolee characteristics and statuses have changed between 2005 and 2020.²⁸ While sex, race, supervision status, and maximum-incarceration sentence have remained relatively stable, more recently a larger proportion of those on parole have committed violent crimes and a smaller proportion of persons on parole have committed property or drug crimes.

As with probation decision-making, judges will take into account the following general criteria when considering whether or not an incarcerated person should be granted parole:

TABLE 14.2 ■ Characteristics of Adults on Parole, 2005 and 2020

Characteristic	2005	2020
Sex	100%	100%
Male	88	88
Female	12	12
Race/Hispanic origin	100%	100%
White	41	44
Black/African American	39	37
Hispanic/Latino	18	16
American Indian/Alaska Native	1	2
Asian	1	1
Native Hawaiian/other Pacific Islander	<1	<1
Two or more races	<1	<1
Status of supervision	100%	100%
Active	83	82
Inactive	4	4
Supervised out of state	4	4
Financial conditions remaining	—	0
Absconder	7	7
Other	2	2
Maximum sentence to incarceration	100%	100%
Less than 1 year	7	7
1 year or more	93	93
Most serious offense	100%	100%
Violent	26	36
Property	24	19
Drug	37	30
Weapons	—	6
Other	13	10

Note: Detail may not sum to total due to rounding. Estimates are based on most recent data and may differ from previously published statistics. Characteristics are based on probationers with a known type of status.

—Information not available.

Source: Danielle Kaebler, "Probation and Parole in the United States, 2020," *Bureau of Justice Statistics*, December 2021, <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>.

- The nature and seriousness of the current offense, including aggravating and mitigating circumstances
- Statements made in court concerning the sentence
- The length and seriousness of the incarcerated person's prior record

- The incarcerated person's attitude toward the offense, family members, the victim, and authority in general
- The attitude of the victim or victim's family regarding the incarcerated person's release
- The incarcerated person's insight into causes of past criminal conduct
- The incarcerated person's adjustment to previous probation, parole, or incarceration
- The incarcerated person's participation in institutional programs
- The adequacy of the incarcerated person's parole plan, including residence and employment²⁹

Like persons on probation, persons on parole must still abide by certain conditions that the court and parole officers will put in place. As with probation, if the person on parole does not comply with conditions of parole, there are two possible types of violations that might be committed:

- *Technical violations:* These may include failing to report regularly to the parole officer (PO), not keeping the PO advised of changes in address, not providing notice of change in employment, not reporting any new arrest, associating with other felons, traveling in violation of time or distance constraints, possessing weapons, using alcohol or drugs, wearing electronic monitoring device improperly, or contacting a partner who was victimized in a domestic violence case.
- *Substantive violations:* These occur when the person on parole commits a new criminal offense.

If either or a combination of these violations occurs, the parole officer may initiate charges of parole violation. The violation of parole conditions is viewed as a serious offense and can be a felony and result in a judge's revocation order. As soon as a parole violation occurs, an arrest may soon follow, and the defendant may be ordered to appear in court for a violation hearing (described more below). Over 25% of adult persons on parole exit that status each year due to some negative event—for example, they received a new sentence, parole was revoked because they committed a new crime, they violated a condition of supervision, or they absconded.³⁰

Until 1972, decisions to revoke one's parole and return the individual to prison could be made arbitrarily by individual parole officers. However, the U.S. Supreme Court, in *Morrissey v. Brewer*, held in that year that persons on parole who faced the possibility of losing their freedom possessed certain rights under the Fourteenth Amendment:³¹

- Written notice of the alleged violation(s)
- A preliminary hearing to establish whether there is probable cause that the person on parole violated the conditions of parole
- Disclosure of the evidence against the person on parole
- The opportunity to be heard in person and to present witnesses and documentary evidence
- The right to confront and cross-examine adverse witnesses
- A neutral and detached body to hear the evidence
- A written statement by the fact finders concerning the evidence relied upon for any revocation decision

If the hearing officer (not necessarily a judge) finds that probable cause exists to believe that a violation has occurred, the hearing will move to the adjustment phase, which is where the information is introduced about why the individual should or should not be continued on supervision.

One of the most important groups of individuals that parole board members interact with is victims of crime. At one time, victims were not typically involved with the parole process

in the United States, but that has changed. Through strong victim advocacy, crime victims have begun to be recognized as key stakeholders in the criminal justice process. Today, paroling authorities typically provide victims with information concerning any activity in the case they are involved with, provide opportunities for input to the board—in person and/or in writing—and consider the needs of and dangers to victims as part of their decision-making procedures. Several states now appoint victims of crime or victim advocates as members of their paroling authorities.³² Figure 14.1 shows the parole decision-making guidelines employed by the Pennsylvania Commission on Sentencing.

FIGURE 14.1 ■ Pennsylvania Commission on Sentencing, Parole Guidelines Worksheet for Violent Offenders

Pennsylvania Commission on Sentencing PAROLE GUIDELINES WORKSHEET FOR VIOLENT OFFENDERS				Commission ID: Date Risk Score Calculated:	
Offender Name:		State ID Number:		Type of Case: V/NV/RRRI	
Date of Birth:		Parole ID Number:		Type of Interview: Min/Min Subseq	
Age at Interview:		Inmate Number:		Reparole/Reparole Subseq Application	
		Institution:		Date of Interview:	
Current Offense:				Violence Indicator:	
Total Sentence:				Requires SORNA Registration:	
Minimum Date:				Alcohol or Drug Related:	
Maximum Date:				Firearm/Other Weapon Used:	
Summary of Risk: Level of Service Inventory-Revised Overall Rating Overall Risk Category					
LSI-R Score:					
Summary of Preparedness Factors Overall Rating Overall Preparedness Category:					
Pre-Interview					
Are required programs completed or in progress?		-	Out of 11 Factors		
Misconduct free for the past year?		-	0 - 7 Low		
Free of assaultive/criminal misconducts for the past year?		-	8 - 9 Medium		
Free of prior probation/parole revocations?		-	10 - 11 High		
Free of alcohol or drug dependence?		-			
Compliant with all prescribed medications?		-			
Positive recommendation from DOC?		-			
Interview					
Expressed motivation for success		-			
Expressed acceptance of responsibility		-			
Expressed insight and positive response to criminal behavior?		-			
Stable release plan (community and/or family support)?		-	Total Score = _____		
Parole Guidelines Recommendation (Violent): Suggest Parole/Suggest Refusal					
		Preparedness Category Low Medium High (0-7) (8-9) (10-11)			
High (≥33)		Refuse	Refuse	Grant	
Risk Medium Category (22-33)		Refuse	Refuse	Grant	
Low (0-19)		Refuse	Grant	Grant	
Parole Decision: Grant Parole/Refuse Parole					
Does this decision deviate from the Parole Guidelines recommendation? Yes/No					
Override Factors					
Mental Health/Medication Compliance		Yes/No		Detainer Status Yes/No	
Negative Interest in Parole		Yes/No		Approaching Maximum Sentence (less than 1 year) Yes/No	
Judicial Input		Yes/No			
Prosecution/Public Safety Input		Yes/No			
Reasons for Departure					
If the parole decision deviates from the guidelines recommendation for reasons other than override factors indicate reason below.					

Source: Commonwealth of Pennsylvania, "The General Assembly," *Pennsylvania Bulletin* 50, no. 28 (July 11, 2020), p. 3415.

YOU BE THE . . . PAROLE BOARD

Let's consider a former true-crime case (see if you can guess the person featured in this story). One man's fraudulent Ponzi scheme bilked investors out of tens of billions of dollars, for which he was sentenced to 150 years in prison. This offender, a former NASDAQ chairman, victimized nearly 5,000 clients, involving more than 20,000 individual investors, pension funds, corporations, universities, and celebrities. Several billion dollars in payouts were eventually made to victims, but only a fraction of the stolen money was returned. He became incarcerated in a federal prison in North Carolina.

Imagine that he is now in his early 80s and has a job selling commissary items to incarcerated persons. Other incarcerated persons reportedly accord him great respect due to the scale of his crimes and for his refusal to implicate any of his employees in the scheme (while also providing other incarcerated persons stock tips and financial advice). He is also said to be experiencing heart problems and physical pain, having no family visitors (two sons have died since his arrest) and avoiding any responsibility or remorse for his crimes. Instead, he is said to be devoting a large amount of his time to attempting to rehabilitate his public image and shift blame to his investors—whom, he argues, expected unrealistic returns on their investments, which then led to his being set up for a fraud conviction. These claims have caused a former FBI profiler to deem him a classic sociopath, or someone who functions without a conscience and has an antisocial personality.

There appear to be two “faces” of our convicted criminal. On the one hand, he appears to be an ailing, older incarcerated adult who is estranged from his family, had no prior record of violence, and is serving a lengthy sentence. The public continues to “pay” for his crimes by footing the bill for his incarceration. On the other hand, he perpetrated the largest financial fraud in history, is apparently unwilling to accept responsibility or express remorse for his crimes, and caused devastating losses to tens of thousands of Americans. Given all that:

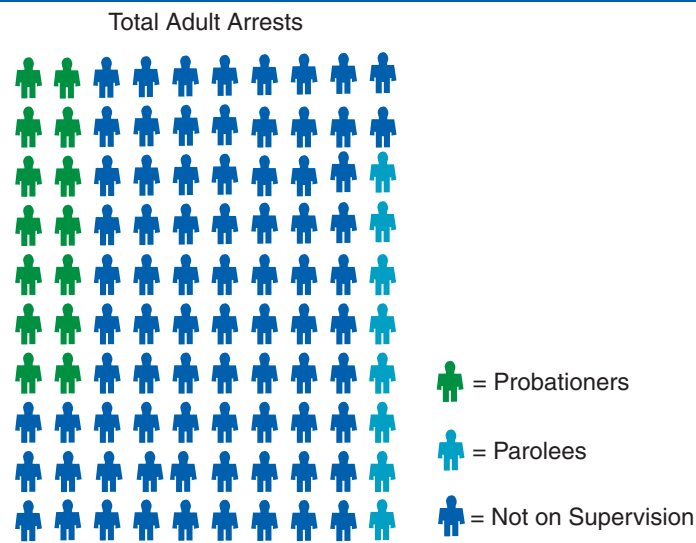
1. Would you vote to grant the person parole at the soonest possible time?
2. If not, are there rehabilitative or victim restitution programs or activities in which this person might participate that would help to support his being granted parole in the future?

See the Notes page at the end of this chapter to see if you identified the correct criminal.³³

DO PROBATION AND PAROLE WORK?

Do probation and parole work by reducing arrests? An ambitious study by California's Council of State Governments (CSG) Justice Center attempted to learn the answer, examining more than 2.5 million adult arrest, probation, and parole supervision records from 11 agencies in four cities—Los Angeles, Redlands, Sacramento, and San Francisco—over a 42-month period.³⁴ The CSG wanted to determine (1) the extent to which people on probation and parole contribute to crime, as measured by arrests, and (2) the types of crimes these people are most likely to commit.³⁵

The findings were a bit surprising. First, people under probation or parole supervision accounted for 22% of total arrests—which means that nearly 8 of 10 arrestees were not supervised, certainly a respectable finding. However, one in three arrests for *drug* crimes involved someone who was on probation or parole—in fact, people under supervision were more likely to be arrested on drug offenses than for violent, property, or other types of crimes.³⁶ During the study period, the number of total arrests declined by 18%, while the number of arrests of people who were under supervision declined by 40%—61% for persons on parole and 26% for individuals under probation supervision.³⁷ It seems, therefore, that supervision generally works, but more work remains to be done in terms of keeping persons on parole and probation from reoffending for drug abuse. Figure 14.2 displays some of the findings.

FIGURE 14.2 ■ Do Probation and Parole Work?

Designation	Adult arrests	% of total
Total	476,054	100%
Parolees	40,476	8.5%
Probationers	66,251	13.9%
Not Supervised	369,327	77.6%

Source: Council of State Governments Justice Center, *The Impact of Probation and Parole Populations on Arrests in Four California Cities*, January 2013, <https://csgjusticecenter.org/wp-content/uploads/2020/02/CAL-CHIEFS-REPORT-revised-25-Feb1.pdf>.

Going Global 14.1

Probation Supervision

Mariel Alper, Alessandro Corda, and Kevin R. Reitz of the Robina Institute of Criminal Law and Criminal Justice compared community supervision rates in the United States with other countries throughout the world. These researchers argue that America suffers not only from “mass incarceration” but also from “mass probation.” Although we commonly think of probation as an alternative to jail or prison sentences, they argue that our punitive approach to justice has led us to use all types of sanctions, including probation and incarceration, more than other countries across the world. They note that although the European countries they studied had roughly twice the population of the United States, the United States had more than 2.5 times the number of adults on probation when compared to these countries.

The United States reports an average adult probation supervision rate of 1,605 per 100,000 residents, while the other 38 countries examined report an average rate of 297 per 100,000 residents. The use of probation varies widely between U.S. states. For example, Ohio reports an average adult probation supervision rate of 2,802, whereas New Hampshire reports an average of 379. The country that comes closest to the U.S. average is Turkey, with an average adult probation supervision rate of 1,212. Including Turkey, only five other countries have rates higher than the state with the lowest average (New Hampshire): Latvia (837), Poland (554), Estonia (503), Hungary (399), and France (399).

Source: To review the data brief produced by the Robina Institute of Criminal Law and Criminal Justice, visit <https://robina.institute.umn.edu/publications/data-brief-american-exceptionalism-probation-supervision>.

FUNCTIONS OF PROBATION AND PAROLE OFFICERS

Both probation and parole officers perform similar functions; in fact, in some states the jobs of parole and probation officers are combined. Both must possess important skills, such as good interpersonal communication, decision-making, and writing skills. They operate independently with less supervision than most prison staff experience. Both are trained in the techniques for supervising people who have committed offenses and then are assigned a caseload. They may be on call 24 hours a day to supervise and assist people who have committed offenses at any time.³⁸

Probation and “Front-End” Duties

Probation officers supervise people who are convicted of offenses at the *front end* of the sentencing continuum—those with a suspended prison sentence—monitoring their behavior in the community and their compliance with the conditions of probation. Probation officers usually work with either adults or juveniles exclusively. Only in small, usually rural, jurisdictions do probation officers counsel both adults and juveniles.

Probation officers have several duties, including the following:

- Reporting to the court any violations of probation
- As officers of the courts, performing presentence investigations and preparing reports concerning the clients on their caseload
- Enforcing court orders, such as arresting those who violate the terms of their probation
- Performing searches, seizing evidence, and arranging for drug testing
- Attending hearings to update the court on the efforts of a person in the system at rehabilitation and compliance with the terms of their sentences
- Using technologies as required, including electronic monitoring devices and drug screening
- Seeking the assistance of community organizations, such as religious institutions, neighborhood groups, and local residents, to monitor the behavior of many people on probation³⁹

Probation officers—as well as parole officers—often experience role conflict, which is brought about by what they perceive as a discrepancy between their two main functions: On the one hand, their job is to “enforce” lawful behavior of their clients and sometimes revoke probation and parole, which is obviously more law enforcement-oriented in nature; on the other hand, they must also be empathetic and understanding and provide guidance and counseling to their clients, which is more of a social worker role.⁴⁰ These seemingly contradictory roles can contribute to job stress.



Probation officers monitor the behavior of persons on probation to check their compliance with the conditions of their probation. These probation officers are performing a compliance sweep at a home of a person on probation.

MediaNews Group/Orange County Register via Getty Images/MediaNews Group/Getty Images

PRACTITIONER'S PERSPECTIVE

PROBATION OFFICER



Name: Jessica Johnston

Position: Probation Officer

Location: Denver, Colorado

What is your career story? I was always interested in the field of justice, but I never really had a strong concept of how that would look as a career. So I studied it in school. I got a bachelor's degree in sociology and psychology and then went on to pursue a master's degree in criminology. It was then that I realized I really wanted to have direct service experience. So probation was just a really natural fit given the academic studies that I had pursued. I originally started in a municipal probation office, where I handled municipal violations, city ordinance violations, and other things like that. I ultimately moved into a state and county probation office. I think probation is this wonderful opportunity for intervention in people's lives, and it offers them a chance to stay connected in the community and really make the necessary changes in the least invasive way possible.

What misconceptions do you often hear about this position? I've encountered a couple common misconceptions about probation officers. The first one is that we're the tough guy, that we're really throwing the book at folks, and all the emphasis is on accountability. But what you find when you start working in the field is that you wear many hats. Yes, you are a source of accountability for probationers, but you're also a resource for them. You help connect them to services they really need in order to make a meaningful change in their lives. That gets lost on a lot of people who don't work in the field, that the role is much more of a relationship where you build a rapport, and you really try to help people to take control of their circumstances. Another big misconception is that a lot of people who enter this field, including myself, really want to work with the highest-risk people, the worst of the worst. But when you start out, you often start with the lower-risk caseloads, so you can get your feet wet and learn the ropes. I actually came to enjoy working with low- and moderate-risk clients far more because what I found was that on probation, most people are actually ordinary people that have made a mistake or have an unresolved problem or issue. It's really an exciting experience to be part of an intervention that helps them self-correct or get them the help they need.

What role does diversity play in this position? The front line of probation is dominated by women, which is different from how it was historically. I do think that management positions continue to be held by more males. That's slowly changing, but I still see that divide between men in management and women as front-line workers. In terms of the clientele, it's really contextualized by the jurisdiction you're in. There are a lot of rural places in Colorado that just don't have the diversity that urban Denver does, so we've had a lot of conversations about what our client population looks like and

whether that's reflective of what it should look like. We're moving in the right direction, but we still see a lot of disproportionate representation of minorities, and we see them underrepresented in the specialized programs. Where I worked was an urban area, so we had officers of every race. We also had a number of officers who spoke Spanish, which was critical because we had a large Hispanic population in our area. We absolutely needed officers who came with the interpretation skills and were able to converse with clients and work with them just as we did with our English-speaking clients.

Parole and “Back-End” Duties

Parole officers perform *back-end* duties of the sentencing continuum, supervising incarcerated persons who have been released from prison. Parole officers are most often employed by the state department of corrections; the state criminal justice department; or a youth authority/juvenile corrections, county, or federal justice department. Like probation officers, parole officers supervise incarcerated persons through personal contact with them and their families; this can be quite dangerous (and lead to role conflict, discussed previously), as parole officers work directly with people who are on parole, their friends, and their family. Like persons on probation, some persons on parole are required to wear an electronic device so parole officers can monitor their location and movements. Parole officers' duties include

- Helping persons on parole adjust back into society, as well as avert any actions that would jeopardize their parole status
- Developing a plan for persons on parole before they are released from prison
- Planning employment, housing, health care, education, drug screening, and other activities that help the person on parole's rehabilitation and functioning in a community environment
- Arranging for persons on parole to get substance abuse rehabilitation or job training
- Attending parole hearings and making recommendations based on their interviews with and surveillance of person on parole⁴¹

The Burden of Large Caseloads

Caseload refers to the average number of cases supervised by a probation or parole officer in a given period. Each case represents someone on probation or parole supervised by an individual officer. As John Conrad observed,

There is much that a good probation/parole officer can do for the people on his or her caseload. A parole officer who makes it clear that, “Fellow, if you don't watch your step I'm gonna run your ass right back to the joint,” is not in a position to be helpful as a counselor or facilitator. With the best intentions, a[n] officer struggling with the standard unwieldy caseload of 100 or more will deal with emergencies only, and sometime will not be able to do that very well.⁴²

As noted earlier, about 3.9 million persons are on either probation or parole in the United States. Is there a precise number of persons who can be supervised effectively by an officer? The answer is no because the number of persons an officer can supervise effectively is a function of the type of offenses each person has been charged with; all persons charged with offenses and officers are unique and bring different knowledge, skills, capacities, and competencies. The American Probation and Parole Association (APPA) asks the question, rhetorically,

How many patients can a surgeon operate on in a given day? How many cars can a mechanic fix each week? How many haircuts can a barber complete in a month? It does not take an expert in any of these fields to realize the answer normally is that *it depends*.⁴³

Of course, caseload size can affect the quality of supervision that an officer is able to provide—and can also bring the glare of the media when something goes horribly wrong. For example, a newspaper in

Detroit published an exposé titled “Felons on Probation Often Go Unwatched.” The article reported that the county had roughly 30,000 persons on probation and approximately 250 officers to supervise them—an average of nearly 120 persons per officer. In one case, an officer was fired after someone on probation was arrested for attempted murder and engaging in a shoot-out with police. The person on probation was a fugitive, missing several office visits, but he was never reported as an absconder, nor was he listed as a fugitive at the time of the shooting. According to the article, the probation officer “was so overworked that she failed to get an arrest warrant for [the probationer] when he became a fugitive for missing his monthly probation office appointment. [The officer] still hadn’t done so by March 28 when he was arrested.”⁴⁴

The APPA points out that caseload sizes have long been too large and for several identifiable reasons:

For at least the past four decades, it has been well-known to professional insiders that probation and parole officer workloads exceed realistic potential for accomplishing the numerous tasks required to supervise offenders. The point here is that many departments are increasing caseloads to well over 200 offenders per officer, making it virtually impossible for officers to receive adequate attention and interaction from officers to have any substantial rehabilitative effect. Compounding these issues is the current trend of concentrating on sex offenders, the infusion of electronic monitoring technologies, and increasing the use of probation for higher-risk offenders as well as widening the justice net to low-risk offenders.⁴⁵

To Arm or Not to Arm

Whether probation and parole officers should be armed has also been debated. Traditionalists believe that carrying a firearm contributes to an atmosphere of distrust between the client and the officer; they argue that if officers carry weapons, they are perceived differently than as counselors or advisors, whose purpose is to guide persons on probation or parole into treatment and self-help programs. Conversely, some people view a firearm for these officers as essential for protecting them from the risks associated with confronting persons who are at risk of committing violent, serious, or high-risk offenses.⁴⁶ Officers must visit homes and places of employment in the neighborhoods in which persons on probation or parole live; some of these areas are not safe. Equally or more dangerous is when officers must revoke parole or probation, which could result in the supervised persons imprisonment.

There is no national or standard policy regarding weapons, and officers themselves are not in agreement about being armed. Some states classify probation and parole officers as peace officers and grant them the authority to carry a firearm both on and off duty.⁴⁷ In sum, the prudent decision concerning arming should be based on the need, officer safety, and local laws and policies.

OTHER ALTERNATIVES: INTERMEDIATE SANCTIONS

In addition to the diversionary (or problem-solving) drug, mental health, and other specialty courts that reduce jail and prison populations, there are corrections programs—**intermediate sanctions**—that are less restrictive than total confinement but more restrictive than probation and that reduce those populations as well. In fact, a survey by the federal Bureau of Justice Statistics found that in addition to the 549,100 persons who are confined in U.S. jails, approximately 50,100 are supervised outside the jail facility under electronic monitoring, home detention, day reporting, community service, treatment programs, and other pretrial and work programs.⁴⁸ These and other forms of supervision are discussed in the following sections.

Intensive Supervision Probation and Parole

Since their beginning, **intensive supervision probation and parole** have been based on the premise that increased client contact would enhance rehabilitation while affording greater client control. Current programs are largely a means of easing the burden of prison overcrowding.⁴⁹

Intensive supervision programs can be classified into two types: those stressing diversion and those stressing enhancement. A *diversion program* is commonly known as a “front door” program because its goal is to limit the number of generally low-risk persons who enter prison. An *enhancement program*

generally selects already-sentenced persons on probation and parole and subjects them to closer supervision in the community than they receive under regular probation or parole.⁵⁰ As of 1990, jurisdictions in all 50 states had instituted *intensive supervision probation* (ISP). Persons placed on ISP are supposed to be those who, in the absence of intensive supervision, would have been sentenced to imprisonment. Although ISP is invariably more costly than regular supervision, the costs “are compared not with the costs of normal supervision but rather with the costs of incarceration.”⁵¹

ISP is demanding for persons on probation and parole and does not represent freedom; in fact, it may stress and isolate those who repeat offenses more than imprisonment does. Given the option of serving prison terms or participating in ISPs, many persons convicted of offenses have chosen prison.⁵² Consider the alternatives now facing incarcerated persons in one western state:

- *ISP*: The incarcerated person serves 2 years under this alternative. During that time, a probation officer visits the person on probation two or three times per week and phones on the other days. The person on probation is subject to unannounced searches of their home for drugs and has their urine tested regularly for alcohol and drugs. The person on probation must strictly abide by other conditions as set by the court: not carrying a weapon, not socializing with certain persons, performing community service, and being employed or participating in training or education. In addition, they will be strongly encouraged to attend counseling and/or other treatment, particularly if they have committed a drug offense.
- *Prison*: The alternative is a sentence of 2 to 4 years, of which the incarcerated person will serve only about 3 to 6 months. During this term, the incarcerated person is not required to work or to participate in any training or treatment but may do so voluntarily. Once released, they are placed on a 2-year routine parole supervision and must visit their parole officer about once a month.⁵³ Although evidence of the effectiveness of this program is lacking, it has been deemed a public relations success.⁵⁴ Intensive supervision is usually accomplished by severely reducing caseload size per probation or parole officer, leading to increased contact between officers and clients or their significant others (such as spouse or parents).⁵⁵

This point also can be illustrated with a case in Colorado in which a person convicted of felony sexual exploitation of a child asked the court to send him to prison rather than serving out 20 years on ISP.⁵⁶ The court agreed to revoke his probation, and he was sentenced to 12 years in prison. At the hearing, he argued that he did not want to be in the “probation/treatment” trap any longer.⁵⁷

House Arrest

Since the late 1980s, **house arrest** (also known as **home confinement**) has become increasingly common. With house arrest, persons convicted of an offense receive a “sentence” of detention in their own homes, and their compliance is often monitored electronically. The primary motivation for using this intermediate sanction is a financial one: the conservation of scarce resources. Note that house arrest is often used in tandem with electronic monitoring, discussed in the next section.

Many people apparently feel that house arrest is not effective or punitive enough. Indeed, a past study reported that only about 20% of the public think persons convicted of a crime could be safely released into the community, even if under supervision;⁵⁸ and nearly half (44%) of the public feel that house arrest is not very effective or not effective at all.⁵⁹ Does house arrest work? Looking at a sample of 528 adult convicted of felonies who had been released from house arrest, Jeffery Ulmer found that the sentence combination associated with the least likelihood of rearrest was house arrest/probation.⁶⁰ The combinations of house arrest/work release and house arrest/incarceration were also significantly associated with decreased chances of rearrest compared to traditional probation. Furthermore, whenever any other sentence option was paired with house arrest, that sentence combination significantly reduced the chances of rearrest and the severity of rearrest charges.⁶¹ House arrest puts the person convicted of offenses in touch with opportunities and resources for rehabilitative services (substance abuse or sex offense counseling, anger management classes, etc.), which supports the contention that for intermediate sanctions of any type to reduce recidivism, they must include a rehabilitative emphasis.⁶²

Electronic Monitoring

Electronic monitoring (EM) or supervision can be used for a variety of persons convicted of offenses, but it is particularly useful for those committing high-risk offenses, especially sex offenses for whom use of a global positioning system (GPS) is desirable.⁶³ The Urban Institute, in conjunction with the District of Columbia Crime Policy Institute, reports that EM reduces arrests by 24%, on average, for program participants.⁶⁴ Estimates suggest that EM costs up to \$35 per day, and defendants are increasingly required to pay these costs.⁶⁵

Two types of EM devices are typically used today. The first uses radio frequency (RF) monitoring. Radio waves are sent between a worn monitoring device and a secondary device, often placed in the person's home if under house arrest. Correctional officers are alerted if the surveilled person moves out of range from the receiving device. The second device uses GPS monitoring. This type of device can be used for house arrest, but it can also monitor persons who are permitted to work or travel to other places for legitimate purposes. This technology uses geofencing to ensure the person does not travel beyond established boundaries in particular places. Recent technology has also equipped GPS devices with a speaker to allow authorities to communicate with the device wearer.⁶⁶

Most of the early EM technologies, including those that used telephone lines for transmission or voice verification technology have been replaced as agencies adopt more accurate systems and devices. Technology is evolving and these tracking systems continue to improve. The National Institute of Justice established national minimum performance requirements and testing methods for EM devices to enhance public safety.⁶⁷



Electronic monitoring systems are particularly useful for high-risk offenders, especially sex offenders for whom use of a global positioning system (GPS) is desirable.

PAUL RATJE/AFP/Getty Images

Shock Probation/Parole

Shock probation/parole is another less costly intermediate alternative to incarceration that is supported by many correctional administrators. Typically used for persons who are convicted of first-time or early-career lower-level offenses who are eligible (drug crimes, larceny-theft), this form of corrections combines a brief exposure to incarceration, usually 30 to 120 days, with subsequent release. It allows sentencing judges to reconsider the original sentence to prison and, upon motion, to recall the incarcerated person after a few months in prison and place them on probation, under conditions deemed appropriate. The idea is that the “shock” of a short stay in prison will give the incarcerated person a taste of institutional life and will make such an indelible impression they will be deterred from future crime and will avoid the negative effects of lengthy confinement.⁶⁸ Like other alternatives to incarceration,

shock probation can result in a cost savings (compared to longer-term incarceration) and can provide the incarcerated person with community resources once on supervised probation.

Boot Camps/Shock Incarceration

Correctional **boot camps**, also called shock incarceration, were first implemented as an intermediate sanction in 1983.⁶⁹ Early versions of boot camps placed incarcerated persons in a quasi-military program of 36 months' duration similar to a military basic training program. The goal was to reduce recidivism, prison and jail populations, and operating costs. Incarcerated persons generally served a short institutional sentence and then were put through a rigorous regimen of drills, strenuous workouts, marching, and hard physical labor. To be eligible, incarcerated persons generally had to be young and convicted of nonviolent offenses.

Unfortunately, early evaluations of boot camps generally found that participants did no better than other incarcerated persons without this experience.⁷⁰ The National Institute of Justice, in an overview of correctional boot camp research, reports that boot camps are generally not effective in reducing recidivism.⁷¹ Only boot camps that were carefully designed, targeted the right incarcerated persons, and provided rehabilitative services and aftercare were deemed likely to save the state money and reduce recidivism.⁷² As a result of these findings, the number of boot camps declined; by the year 2000, only 51 prison boot camps remained.⁷³ News reports of deaths (at least 31 between 1980 and 2009) further contributed to the abandonment of this alternative form of incarceration.⁷⁴

So-called second-generation boot camps have evolved over time, however, and added components such as alcohol and drug treatment and social skills training (some even include post-release electronic monitoring, house arrest, and random urine tests); some boot camps have also substituted an emphasis on educational and vocational skills for the military components.⁷⁵ As an example of the latter, Pennsylvania's Motivational Boot Camp—one that combined militaristic exercise with multilayered treatment—had disappointing results with recidivism when boot camp participants were compared to those released from prison; however, more encouraging results were found regarding recidivism for participants who were employed or were repeat offenders. On average, a boot camp sentence reduced a prison stay by 1 year.⁷⁶



Correctional boot camps, also called shock incarceration, have been used in jails and prisons to place offenders in a quasi-military program to instill discipline and thus reduce recidivism, prison and jail populations, and operating costs.

AP Photo/Mike Groll

Case Study 14.2

Success for the Waukesha County, Wisconsin, Day Report Center

Begun in 2007, the Waukesha County, Wisconsin, Day Report Center has received praise from county officials for its contribution to public safety and rehabilitation of incarcerated persons. Officials have concluded that—at least for many who are incarcerated—jail is not necessary; these persons can be held accountable in other ways and should be given a chance and support to change their behavior.

A county circuit judge called the Day Report Center's establishment and success his proudest accomplishment in 6 years on the job. According to program statistics, the Day Report Center has experienced an 85% success rate with incarcerated persons who have successfully completed a regimen of drug and alcohol testing, electronic monitoring, job searches, community service, and regular meetings with case managers (who connect with, monitor, advise, encourage, and support the clients).

The program, established in an open hallway area of a jail, now has several offices and a group meeting room so participants can meet with staff. The program has 50 participants, many of whom have been convicted of drunken driving but also including those convicted of other nonviolent misdemeanors and felonies.

Judges order Day Report Center attendance in addition to or as a condition of sentences, while the sheriff uses it as a supplement for some incarcerated persons who are released on electronic monitoring. Officials also say it has reduced crowding in jails and has changed clients' behavior.

Sources: Adapted from Laurel Walker, "Officials Laud Success of Waukesha County Day Report Center," <http://www.jsonline.com/news/waukesha/waukesha-county-day-report-centers-success-lauded-0h40u0c-144731385.html>; also see Court Services and Community Alternatives, "Waukesha Day Report Center," <http://archive.jsonline.com/news/waukesha/waukesha-county-day-report-centers-success-lauded-0h40u0c-144731385.html>.

Day Reporting Centers

Another intermediate sanction that has recently gained popularity among correctional administrators and policy makers is the **day reporting center** (DRC). DRCs are places where persons who have commit offenses report with some frequency (usually once or twice a day); treatment services (job training and placement, counseling, and education) are usually provided at the DRCs, either by the agency running the program or by other human services agencies.⁷⁷

The purposes of DRCs are to heighten control and surveillance of persons who have committed offenses and are placed on community supervision, increase their access to treatment programs, give them more proportional and certain sanctions, and reduce prison or jail crowding. One study of the effect of DRCs on recidivism, however, found no significant reduction in the rate of rearrest.⁷⁸ This finding has been supported by a recent review of nine DRC evaluations, which found this correctional intervention has no effect on recidivism rates.⁷⁹

Halfway Houses

Another approach to rehabilitation and incarceration is the **halfway house** (often called a community correctional center, a residential rehabilitation center, or, at the federal level, a residential reentry center). Here, convicted individuals who are serving alternative sentences or who have been released early from jail or prison live in a state-run or for-profit facility in hopes of transitioning to life outside. Like most reentry programs that attempt to transition convicted persons back into communities, the research on halfway house effectiveness is mixed. Some studies show declines in recidivism, while others show no effect on reoffending.⁸⁰ Overall, most research finds halfway houses to be effective.⁸¹ The idea of housing certain persons in a less punitive setting was emphasized in 1961 by then-U.S. attorney general Robert Kennedy as a means of grooming at-risk young persons for a law-abiding life.⁸²

Generally, such facilities are to provide a safe, structured, supervised environment, as well as employment counseling, job placement, financial management assistance, and other programs and services.⁸³

Furloughs

Another means by which an incarcerated person can leave a correctional facility is via furlough. For those in jail, the purpose of furlough is commonly to allow—on a limited-time basis—them to obtain medical or mental health treatment, attend the birth of a child or a relative’s funeral, and so on. For those in prison, the release is also typically for a limited-time basis and for one of the following reasons: to transfer from one correctional facility to another or to home confinement, to attend to a family crisis or other urgent situation, or to engage in structured group programs (usually for vocational, medical, religious, educational, or recreational reasons) for a short period of time.⁸⁴

CONFRONTING RECIDIVISM: THE RISK-NEED-RESPONSIVITY (RNR) MODEL

How can the cycle of reoffending and reincarceration be stopped? Should someone convicted of an offense be confined in prison, placed on community supervision, or both? Several decades of research and experience have provided specific programs—practices and principles—that, when implemented, can answer this age-old question.

First, it is imperative that someone convicted of an offense is assessed for their future risk for reoffending and that it be possible to do so. As an example, in 2009 the Washington state legislature required its department of corrections to develop and use an instrument that has the “highest degree of predictive accuracy” for assessing a person convicted of offending and their risk of reoffense. After considering several such instruments, five assessment tools were selected and used for this purpose.⁸⁵

Next, what kinds of programs should be used with these persons who are in jails and prisons and on probation and parole? Such approaches are known collectively as the risk-need-responsivity (RNR) model. In short, they operate on the assumption that using trained personnel to identify individual risks and needs of persons who have been convicted—and then responding to those needs with the best combination of services and supervision—can lead to a significant reduction in recidivism.⁸⁶ The risk levels of persons who are convicted of offenses are determined by certain factors or characteristics that can be changed through intervention: one’s antisocial behavior, close association with known persons in the system, poor family and/or marital relationships, bad school or work relationships, and substance abuse. Once these risks are identified, specific treatment interventions can be put in place to reduce their likelihood of continuing criminality.⁸⁷ Screening and assessment instruments are used for these purposes within the corrections field. Dozens of studies have shown, unequivocally, that using RNR principles of rehabilitation for persons who are convicted significantly reduces recidivism.⁸⁸ Although a one-size-fits-all model has been used in the past, recent advancements in this field have suggested the need for culturally specific and gender-specific tools to enhance RNR effectiveness.⁸⁹ Figure 14.3 shows the kinds of questions used in an RNR assessment tool.

RESTORATIVE JUSTICE

In the view of many American citizens, a major shortcoming in the criminal justice system is that it considers crime as an act against the *state*, rather than against *people*, and thus removes human victims and their voices from the entire process. They believe that, even though costs of prisons and jails have skyrocketed (now estimated at a minimum of \$81 billion),⁹⁰ we are not safer. Meanwhile, most incarcerated persons while away their time in prisons and jails without any encouragement or incentive to

FIGURE 14.3 ■ Center for Advancing Correctional Excellence Criminal Cognitions Scale, RNR Simulation Tool

Externalization of Blame	Please indicate how well each statement describes your current thinking.			
	Strongly Disagree	Disagree	Agree	Strongly Agree
Bad childhood experiences are partly to blame for my current situation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I feel like what happens in my life is mostly determined by powerful people.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Because of my history, I get blamed for a lot of things I did not do.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sometimes I cannot control myself.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am just a “born criminal.”	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Notions of Entitlement	Please indicate how well each statement describes your current thinking.			
	Strongly Disagree	Disagree	Agree	Strongly Agree
When I want something, I expect people to deliver.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I will never be satisfied until I get all that I deserve.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I expect people to treat me better than other people.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I insist on getting the respect that is due me.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I deserve more than other people.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Devaluing Authority	Please indicate how well each statement describes your current thinking.			
	Strongly Disagree	Disagree	Agree	Strongly Agree
Most of the laws are good.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Most police officers/guards abuse their power.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
People in authority are usually looking out for my best interest.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If a police officer/guard tells me to do something, there's usually a good reason for it.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
People in positions of authority generally take advantage of others.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Immediate Gratification	Please indicate how well each statement describes your current thinking.			
	Strongly Disagree	Disagree	Agree	Strongly Agree
The future is unpredictable, and there is no point planning for it.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Even though I got caught, it was still worth the risk.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Why plan to save for something if you can have it now?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I think it is better to enjoy today than worry about tomorrow.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I do not like to be tied down to a regular work schedule.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insensitivity to Impact of Crime	Please indicate how well each statement describes your current thinking.			
	Strongly Disagree	Disagree	Agree	Strongly Agree
My crime(s) did not really harm anyone.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A theft is all right as long as the victim is not physically injured.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Victims of crime usually get over it with time.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
When you commit a crime, the only one affected is the victim.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Society makes too big of a deal about my crime(s).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Source: Adapted from Jeffrey Stuewig, Emi Furukawa, Sarah Kopelo, June Price Tangney, Sarah Kopelovich, Patrick J. Meyer, and Brandon Cosby, “Reliability, Validity, and Predictive Utility of the 25-Item Criminogenic Cognitions Scale (CCS),” *Criminal Justice and Behavior* 39 (October 2012): pp. 1340–1360.

take responsibility for their crimes and are not changed upon release, leaving their victims dissatisfied with the entire experience.

Restorative justice works to remove the barriers between victims and incarcerated persons, who many times have a strong desire to meet each other and to discuss the criminal event that brought them together. It is victim driven, emphasizing ways to transform incarcerated persons by learning of the harms they perpetrated against the victim and community and making them more accountable (and thus less likely to recidivate). It can involve victims and incarcerated persons having a dialogue by meeting face-to-face or merely exchanging letters, and it can deal with any type of crime. Although difficult for incarcerated persons to do, it can be for them (and their victims) a very satisfying and rewarding experience that is critical to restoration and healing.



Restorative justice maintains that crime affects not only the victim but the entire community as well, so it involves meetings including the offender, the victim, and members of the community to devise a rehabilitative plan to make them whole again.

©REUTERS/Lucy Nicholson

A national organization, Restorative Justice International, provides a wealth of information about restorative justice efforts both in the United States and abroad, as well as a short, informative video (see <http://www.restorativejusticeinternational.com/about/>).

IN A NUTSHELL

- Probation involves a court allowing a convicted person to remain at liberty in the community, subject to certain conditions and restrictions; similarly, parole is the conditional release of an incarcerated person but before their full sentence has been served. Both allow the incarcerated person to remain in the community to take advantage of treatment or counseling, maintain family and employment ties, and so on.
- If one is allowed to be placed on probation, the person on probation must still abide by certain conditions. A technical violation occurs when, for example, the person on probation fails to pay court costs or fines, misses a probation meeting, uses alcohol, or violates curfew. A substantive violation occurs when the person on probation commits a new crime.
- Because they may lose their freedom, persons on probation are allowed to have counsel present at the probation revocation hearing; other due process rights are afforded as well.
- Persons on parole must also abide by certain conditions that the court and parole officers put in place. If they do not comply, parole may be revoked, and the person on parole returned to prison. Persons on parole also have certain due process rights prior to revocation.
- Probation officers perform duties such as reporting to the court any violations of probation, performing presentence investigations, arresting those who violate the terms of their probation, performing searches, seizing evidence, and arranging for drug testing.
- Parole officers supervise incarcerated persons who have been released from prison through personal contact with them and their families. They help persons on parole adjust back into society, developing a plan for employment, housing, health care, education, drug screening, and other activities.

- Whether probation and parole officers should be armed has been a debated topic in corrections; there is no national or standard policy for these personnel regarding weapons, and officers themselves are not in agreement about being armed.
- Several intermediate sanctions are used in attempting to further rehabilitative efforts and to reduce jail and prison populations. These include intensive supervision probation and parole, house arrest, electronic monitoring, shock probation/parole, boot camps/shock incarceration, day reporting centers, halfway houses, and furloughs.
- To avoid reincarceration, the future risk for reoffending must be assessed for each incarcerated person; approaches used are known as the risk-need-responsivity (RNR) model.
- Restorative justice holds that the first priority of justice processes is to assist victims, whereas the second priority is to restore the community.

KEY TERMS

Alternatives to incarceration (p. 334)	Intermediate sanctions (p. 349)
Boot camp (p. 352)	Parole officer (p. 348)
Caseload (p. 348)	Probation (p. 333)
Community corrections (p. 333)	Probation officer (p. 346)
Day reporting center (p. 353)	Restorative justice (p. 355)
Electronic monitoring (p. 351)	Revocation (p. 339)
Halfway house (p. 353)	Shock probation/parole (p. 351)
Home arrest/home confinement (p. 350)	Substantive violation (p. 338)
Intensive supervision probation and parole (p. 349)	Technical violation (p. 338)

REVIEW QUESTIONS

1. What is meant by the term “community corrections”?
2. What historical events led to modern-day probation? Parole?
3. What are the rights granted by the U.S. Supreme Court to people who are on probation and parole in general? When the state wishes to revoke their probation/parole status and send them to prison?
4. What are some examples of technical and substantive conditions that correctional agencies commonly apply to persons on probation and parole?
5. Why does the criminal justice system use alternatives to incarceration?
6. How would you describe the primary functions of probation and parole officers? What is the impact of high caseloads in terms of how these officers are able to achieve their goals?
7. How would you describe the arguments for and against arming probation and parole officers?
8. What are the purposes and functions of intermediate sanctions, including intensive supervision, house arrest, electronic monitoring, shock probation/parole, shock incarceration/boot camps, day reporting centers, halfway houses, and furloughs?
9. How does the risk-need-responsivity model work with incarcerated persons to stop the cycle of reoffending and reincarceration?
10. What is the meaning and purpose of the restorative justice concept, and how does it function?

LEARN BY DOING

1. You graduated recently with a criminal justice degree and are now employed as a state probation and parole officer. You are asked by a criminal justice professor at a nearby college to guest lecture in an introduction to criminal justice course concerning the primary challenges of working in probation and parole. Develop a presentation for the class.
2. Assume it is your first day working as a state probation and parole officer, and your new training officer says the following:

Hi, nice to meet you. I'm Chuck, the training advisor. Here's what I tell everyone on their first day. First, the real world is different from what you've been told in college classes. Politicians promise the public that they will get tough on crime, so first off, they spend money for more police officers. No one gets elected by promising to build more courts or add more probation and parole officers. Eventually, having more police means the courts get backlogged, which in turn crowds the prisons and the jails, puts more people on probation, and forces the parole board to grant more early releases. Meanwhile, our average caseload increases by 50%. We also have more people convicted of drug and sex offenses than we know what to do with. We spend too much time bailing water out of the boat with no one steering, so we are just drifting in circles. To vent the frustrations, about once a week the gang and I hold "choir practice" at a bar down the street. After about five or six beers and some carousing and loud singing, then this job looks a lot better.

- a. Should Chuck be retained as a training officer? Why or why not?
 - b. How would changes in politics affect the corrections system directly and indirectly?
 - c. Do you believe Chuck's comments are accurate concerning the police getting so much new funding—and the subsequent impacts on courts and corrections?
 - d. Why do crowded jails and prisons make the job of parole officers more difficult?
 - e. If you were Chuck's supervisor and heard others discussing their frequent "choir practices" at the bar, would you attempt to discontinue such gatherings or leave the situation alone?
3. Your criminal justice instructor has assigned a class debate concerning the use of incarceration versus alternatives to incarceration (e.g., probation and parole, electronic monitoring, house arrest, halfway houses). What will be your argument?
 4. You start a new job at a nonprofit organization focused on helping incarcerated persons reintegrate back into society after being convicted of a crime. They want to know more about successful restorative justice programs. Research these programs and develop a presentation that explains the characteristics of the most successful restorative justice initiatives.

SPANNING THE SYSTEM

Methods and Issues

PART V

Chapter 15	Juvenile Justice: Philosophy, Law, and Practices	361
Chapter 16	On the Crime Policy and Prevention Agenda: Immigration, Mass Murder, the Cyber Threat	385

This part contains two chapters. **Chapter 15** examines juvenile justice—an area in which the treatment of persons committing offenses is quite different from that of adults in terms of its overall philosophy, legal bases, and judicial process. Included are the history and extent of juvenile crime, risk assessment (of offending), the case flow of juvenile courts, labeling, whether there is a school-to-prison pipeline, youth gangs, and juveniles' legal rights.

Chapter 16 provides an in-depth view of four particularly challenging problems and policy issues confronting society and the criminal justice system today: immigration, mass murder, and the cyber threat.



©iStockphoto.com/Windzepher

15

JUVENILE JUSTICE

Philosophy, Law, and Practices

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 15.1** Describe the early treatment of juveniles and history of our juvenile justice system, which includes houses of refuge, reformatories, and the first juvenile court, created in Illinois.
- 15.2** Explain the unique philosophy, principles, goals, and legal protections underlying the treatment of and philosophy toward young people who commit offenses by the juvenile court system.
- 15.3** Discuss the process and flow of cases through the juvenile justice system and whether there exists a school-to-prison pipeline.
- 15.4** Elaborate on the extent of—and possible solutions to—youth gangs.
- 15.5** Review approaches to providing formal aftercare and reentry services for juveniles upon leaving physical custody.
- 15.6** Delineate due process and other major rights of juveniles as set forth by the U.S. Supreme Court.

ASSESS YOUR AWARENESS

Test your knowledge of juvenile rights and the justice system by responding to the following nine true–false items; check your answers after reading this chapter.

- 1. The prevailing philosophy toward all juveniles is that the state should have as much involvement as possible through the juvenile justice system.
- 2. The overall justice philosophy, process, and terminology are essentially the same for young people who commit offenses as for adults who commit offenses.
- 3. It is generally best to place some type of label on your people who commit offenses to assist with their classification and treatment.
- 4. Paramilitary juvenile boot camps have been proven to be an ineffective means of treating delinquency.
- 5. A juvenile who commits a heinous crime and is thus not felt to be suited to the philosophy of the juvenile court may be transferred to the jurisdiction of an adult court.
- 6. Procedural safeguards in the juvenile court system include the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination.
- 7. Young people who commit offenses who are under the age of 18 when they commit a murder may be executed.
- 8. Police do not need to read the *Miranda* warning to juveniles being questioned while in custody.
- 9. Juveniles may still be sentenced to life without parole.

Answers can be found on page 401.

A debate has been going on for decades: How do we prevent, understand, and address the crimes of children? As you will learn in this chapter, most minors are processed through an entirely different justice system than adults. The juvenile system attempts to emphasize reform over punishment. But in recent decades, our criminal justice system has increasingly dealt with young people committing offenses by treating them like adults who are responsible for their actions, to be isolated and punished for their crimes.

This was true for Javarick Henderson Jr., who is accused of fatally stabbing his grandmother in November 2019 when he was 13 years old.¹ An autopsy revealed she had been stabbed 26 times. In April 2021, a judge denied the motions of Henderson’s public defender, who sought to transfer his murder case to juvenile court. In a 12-month period prior to this case, Florida transferred more than 1,000 children to adult court. Such transfers have become more common—many youths across the United States are remanded to adult court for trial.

As you read this chapter, consider how the criminal justice system might devise remedies that fit both the crime and the young person committing the offense. Should young people committing offenses be treated differently, as many argue, due to reduced brain development and given that they are more impulsive, less able to think through the consequences of their actions, more susceptible to coercion, and more likely to take risks? Or should those arguments be rejected, as some noted criminologists have long argued, because this population is rational, knows right from wrong, is a product of their environment more than their biological makeup, and thus warrants harsh treatment?²

INTRODUCTION

What is a “juvenile delinquent”? What rights does one possess as a juvenile? What are the differences in law and criminal justice treatment of juveniles? These are important questions because as an old adage states, crime is primarily a “young person’s game.”

The criminal justice system’s philosophy toward juveniles is very different from its philosophy toward adults. Consequently, police officers and others whose occupations put them in frequent contact with young people who commit offenses must know and apply a different standard of treatment in these situations. The philosophical approach toward young people committing offenses overall is that society—through poor parenting, poverty, environment, and so forth—is primarily responsible for their criminal behavior.

As is also emphasized in this chapter, the juvenile justice system seeks to protect the child—to rehabilitate, not punish; therefore, the juvenile justice process is generally amiable, not adversarial. However, many of today’s young people convicted of crimes are also quite violent. When a juvenile commits an act that is so heinous and violent that the juvenile court philosophy is not tenable in the matter, the protective shroud extended by the juvenile justice process can disappear. In such cases, they may be transferred to the jurisdiction of the adult court to be processed as an adult. Conversely, as will be seen later in this chapter, there has been for many years a movement to expand the rights and privileges of young people convicted of crimes in many areas.

This chapter begins with a discussion of the origins of juvenile justice, including houses of refuge and the creation of the juvenile court. Next is a look at the unique philosophy, principles, goals, and legal protections that underlie today’s juvenile justice system. Following a discussion of the recent shift in policy and treatment of young incarcerated persons and a look at juvenile offending today, we review the general flow of juvenile cases through the juvenile justice process. Several related methods and challenges are then discussed: the problem of labeling persons committing offenses, the school-to-prison pipeline, youth gangs, and the need for aftercare and reentry services for juveniles returning home from custody. The chapter concludes with an examination of several major U.S. Supreme Court decisions granting juveniles legal rights.

HISTORY OF JUVENILE JUSTICE

Our society has long been concerned with its minors (usually defined as those persons between the ages of 10 and 18) who violate the law; such persons are commonly termed “juvenile delinquents.”³ As a result of this concern, there has long been a U.S. juvenile justice system that functions quite differently from the one that addresses crimes committed by adults. The U.S. juvenile justice system has a

rich and, at times, painful history. Here, we discuss the early treatment of juveniles and how the system developed from one that was very harsh and dangerous to that of today, which is much more protective and rehabilitative in philosophy and practice.⁴

Early Treatment: Houses of Refuge, Reformatories

In the early part of the 19th century, to the chagrin of prosecutors and many citizens, juries were acquitting children who were charged with crimes—not wishing to see children incarcerated with adults in ramshackle facilities. Quakers in New York City sought to establish a balance between those two camps—people wanting to see justice done with children who commit offenses and those not wanting them to be incarcerated—and founded the first **house of refuge** in 1825 to “receive and take . . . all such children as shall be taken up or committed as vagrants, or convicted of criminal offenses.” The children worked an 8-hour day at various trades in addition to attending school for another 4 hours. Many of them had not committed any criminal act, and a number were probably status offenders (breaking criminal laws that apply only to minors, described later in this chapter).⁵



Quakers in New York City founded the House of Refuge in 1825 to provide an alternative to children being housed with adult offenders. This picture depicts some of the work- and school-related daily activities there.

Historical/Corbis Historical/Getty Images

At about the middle of the 19th century, the house of refuge movement evolved into the slightly more punitive reform school, or **reformatory**, approach,⁶ which served to segregate young people committing crimes from adults who commit crimes; imprison the young and remove them from adverse home environments until the youths were reformed; help youth avoid idleness through military drills, physical exercise, and supervision; focus on education—preferably vocational and religious; and teach sobriety, thrift, industry, and prudence.

Later in the 19th century, an occasional legal attack on the incarceration of children in such youth prisons was successful. In an 1870 case, the Illinois Supreme Court held it unconstitutional to confine in a Chicago reform school a youth who had not been convicted of criminal conduct or afforded legal due process.⁷ It was against this backdrop in the last quarter of the 19th century that the juvenile court movement began.

A Movement Begins: Illinois Legislation

In 1899, the Illinois legislature enacted the **Illinois Juvenile Court Act**,⁸ creating the first separate **juvenile court**. At that time in the United States, juveniles were tried along with adults in criminal courts and sometimes sentenced to prison and occasionally to death. Prior to 1900, at least 10 children were executed in the United States for crimes committed before their 14th birthdays.⁹

Other children died in adult prisons. Virginia penitentiary records from 1876 reflect that an incarcerated 10-year-old died from being scalded accidentally in a tub of boiling coffee. These deaths shocked the public conscience. Accordingly, Americans in the 20th century sought more pervasive reform than the infancy defense (based on the idea that children lack the emotional and cognitive maturity needed to hold them accountable for criminal acts) to address the distinctive nature of children and youth.¹⁰

Although the Illinois act did not fundamentally change procedures in the courts that were then sitting as juvenile courts to adjudicate cases involving children, it did emphasize the *parens patriae* philosophy (discussed later in this chapter) to govern such cases. In addition to giving the courts jurisdiction over children charged with crimes, the act gave them jurisdiction over a variety of behaviors and conditions, including

any child who for any reason is destitute or homeless or abandoned; or dependent on the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is living in any house of ill fame or with any vicious or disreputable person; or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such a child; and any child under the age of 8 who is found peddling or selling any article or singing or playing a musical instrument upon the street or giving any public entertainment.¹¹

The act was unique in that it created a special court for neglected, dependent, or delinquent children under age 16; defined a rehabilitative rather than punishment purpose for that court; established the confidentiality of juveniles' court records to minimize stigma; required that juveniles be separated from adults when placed in the same institution in addition to barring altogether the detention of children under age 12 in jails; and provided for the informality of procedures within the court.¹²

In 1909, Judge Julian Mack, one of the first judges to preside over the juvenile court, described the court's goals as follows:

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.¹³

Status Offenses

The post–World War II period witnessed further development, as the **status offense** became a separate category, covering acts that would not be criminal if committed by an adult (e.g., purchasing alcohol and tobacco products, truancy, and violating curfew). New York created a new jurisdictional category for **persons in need of supervision (PINS)**: runaways, truants, and other youths who committed status offenses. Other states followed New York's lead. Then came the enactment of the powerful and far-reaching Juvenile Justice and Delinquency Prevention Act of 1974,¹⁴ which removed persons committing status offenses from secure detention and correctional facilities and—more significant, perhaps—prevented the placement of any juveniles in any institutions where they would have regular contact with adults convicted of criminal charges.



An 8-year-old boy charged with stealing a bicycle appears in juvenile court in 1910.

Library of Congress Prints and Photographs Division, Washington

UNIQUE PHILOSOPHY, PRINCIPLES, AND GOALS

This section examines the philosophical underpinnings of the juvenile justice system as well as several contrasts (in both terminology and court proceedings) between these and the adult criminal courts.

Parens Patriae and *In Loco Parentis*

The prevailing doctrine or philosophy guiding our treatment of juveniles is *parens patriae*, meaning the “state is the ultimate parent” of the child. In effect, this means that if we as parents adequately care for and provide at least the basic amenities for our children as required under the law, they are ours to keep. But when our children are physically or emotionally neglected or abused, the juvenile court and police may intervene and remove the children from that environment. Then the doctrine of *in loco parentis* takes hold, meaning the state will act in place of the parent.

For police and other criminal justice personnel, there is perhaps no greater or more somber duty than having to testify under subpoena in juvenile court that a parent is unfit (and their parental ties should be legally severed). However, when a parent or guardian’s actions indicate a pattern of neglect and/or abuse toward a child, it is clearly better that the state assume responsibility for the child’s care and custody.

Table 15.1 shows the *idealistic contrast* between the juvenile court process and the adult criminal justice process. Note this is the *ideal* process for juveniles, in keeping with the more nurturing and forgiving juvenile justice philosophy; however, that can easily go away when a juvenile commits a crime(s) that is so heinous they are deemed not to be amenable to the more lenient philosophy and jurisdiction of the juvenile courts and will thus be remanded to the custody of the appropriate adult court. Also note that much of the difference between the philosophies of juvenile and adult courts is found in the terminology used.

TABLE 15.1 ■ The Idealistic Contrast Between Juvenile and Adult Criminal Justice Processes

Adult	Juvenile
Adversarial procedure	Relatively amiable procedure
Individual responsibility for crime	Societal/family factors involved
Punishment is typically the goal	Rehabilitation is the goal
Arrest process	Petition
Trial—public	Hearing—private
Guilt or innocence	Guilt not the sole issue
Public record	Confidential record
Verdict	Decision
Sentence	Disposition

Underlying Principles of the Juvenile Court

Most states' juvenile court decisions and legislation contain three underlying principles:¹⁵

- The presumption of innocence
- The presumption of the least amount of involvement with the system
- The presumption of the best interest of the minor

The decision-maker—whether the police deciding to take a minor into custody, an intake worker deciding to detain a child, or a juvenile court judge presiding at a hearing—must apply these three principles unless evidence exists to the contrary. The amount of evidence may vary depending on the decision-maker. For example, although police or detention intake may hold a minor if reasonable or probable cause exists to believe the minor has committed an offense, a judge must be satisfied beyond a reasonable doubt that an offense has been committed.

Presumption of Innocence

The **presumption of innocence** is one of the hallmarks of our criminal justice system. It places the burden on the state to prove that the accused has committed an offense. The state cannot force accused persons to testify against themselves, cannot use illegally seized evidence, and must use a process consistent with due process standards to establish guilt.

Least Involvement With the System

The principle of least involvement assumes that minors, like adults, have liberty interests that include the right to be left alone or the right to live in a family situation without state interference. The state has the burden of showing that intervention is necessary for the protection of either the minor or society. Diversion should be considered before a formal petition is filed, and probation should be considered before commitment to an institution. In the detention situation, many states require that a child not be held unless a probable cause exists to believe they have committed a crime and an immediate and urgent necessity exists to admit the child. Detention is discussed more later in this chapter.

Best Interest of the Child

The primary purpose of juvenile justice is to operate in the best interest of the child; this interest must be balanced against the interests of society. Society benefits from programs that help minors mature into law-abiding citizens, and children benefit by being held accountable and developing responsibility.

Goals of the Juvenile Justice System

The four primary goals of the juvenile justice system are as follows:

- *Separation from adults:* This is clearly the most important goal of the juvenile justice system. Reformers argued that children and families needed (1) a different form of justice, (2) separate courtrooms, (3) separate detention centers and institutions to avoid corruption of juveniles by adult criminals (the so-called “sight and sound separation”), and (4) separate sentencing guidelines to avoid the harsh penalties of adult sentencing. Furthermore, there is a separate group of professionals, judges, probation officers, and detention staff with specialized training who are dedicated to working with youths and their families.
- *Youth confidentiality:* Confidentiality of court proceedings and services for youths reinforces the belief that they will mature beyond a criminal lifestyle if given proper guidance and alternatives. Because of their immaturity, youths lack sound judgment and should not be held fully accountable. Consequently, no criminal record should hinder adult advancement. From a developmental standpoint, confidentiality minimizes stigma and labeling and helps them to maintain a positive self-image, thereby reducing the likelihood they will perceive themselves as criminals.
- *Community-based corrections:* Reformers strongly believe that young people should learn and grow in their own communities. Offering probation as a method for monitoring youth behavior in the community while providing services that allow youths to grow to adulthood is seen as the primary dispositional alternative.
- *Individualized justice of minors:* Each case is to be viewed separately. A social history explores the total social circumstances of the youth and their family, and a casework plan is developed that encourages appropriate development and reduced future criminality. Probation staff members are to investigate the social situation early in the process and be involved in the decision to file a case. Whenever possible, the case is not filed formally, and an informal outcome is encouraged.¹⁶



Society benefits from programs that help young persons who have commit offenses to mature into law-abiding citizens, be accountable for their actions, and develop responsibility. These youths are attending a class while in juvenile corrections.

Mikael Karlsson/Alamy Stock Photo

More Legal Protection: The Juvenile Justice Reform Act of 2018

The Juvenile Justice and Delinquency Prevention Act (JJDPA) was first authorized in 1974 to ensure that all states and territories met certain standards for how youth across the country were treated in the juvenile justice system. It established two principles: a prohibition on the incarceration of youth charged with status offenses (discussed earlier) and a requirement that youth have sight and sound separation from incarcerated adults. Later, in 2002 two additional protections were added: a prohibition against housing young people in adult facilities while awaiting trial as juveniles and a requirement that states address disproportionate minority contact.

On December 13, 2018, Congress passed H.R. 6964 with several significant amendments. First, to address racial and ethnic disparities (RED), the law requires that states collect and analyze data on RED, determine at which points RED occur, and establish a plan to address RED. Second, states are required to ensure sight and sound separation and jail removal for youth awaiting trial as adults (this protection previously applied only to youths being held on juvenile court charges). Third, youths who are found in violation of a valid court order may be held in detention, but for no longer than 7 days—if the court finds that such detention is necessary and enters an order that specifies reasonable cause for such detention.¹⁷ The legislation includes grants to fund delinquency prevention programs.

A Recent Shift in Policy, Principles, and Processes

To fully comprehend today's juvenile justice policy, principles, and processes in the United States, it is necessary to take a brief look back in time. Succinctly, after decades of a punitive, “adult time for adult crime,” “tough-on-crime” view toward young persons who commit offenses, policymakers are now returning to the first principles of juvenile justice, discussed earlier: a belief that young people are still developing (as well as are more impulsive, less able to think through the consequences of their actions, and are more likely to take risks) and should be afforded opportunities for treatment, rehabilitation, and positive reinforcement.

Using child advocacy, legislation, and reallocation of resources (as noted in the accompanying Case Study 15.1 feature), most states are attempting to expand juvenile rights, study their offending, prevent delinquency, and develop community alternatives to incarceration. Serious attempts are thus being made to reduce the “school-to-prison pipeline” (discussed later in this chapter) and to end excessive sentences and extreme punishments, juvenile life without parole (JLWOP) sentences, and the use of solitary confinement for incarcerated youth (both JLWOP and solitary confinement are discussed later in this chapter).¹⁸ One side benefit of the demise of the punitive trend is that the juvenile justice system no longer represents a dumping ground for poor, marginalized youth with mental disorders and learning disabilities.

Case Study 15.1

A Sampling of Recent Laws Enacted to Protect Juveniles

According to the Campaign for Youth Justice, 2017–2018 was “a legislative season that included 121 state-level bills related to juvenile justice.” To get a sense of the aspects of juvenile justice considered important by the states to be committed to law, here, in no particular order, is a sampling of recently enacted statutes:

- Broadly speaking, every state has statutes or policies that allow youths accused of certain offenses (especially older teens) to be transferred from the juvenile justice system and tried as adults. But three states still set their “age of jurisdiction” below 18—meaning minors are automatically considered as adults when it comes to the criminal justice system: Georgia, Texas, and Wisconsin.
- *California*: Prosecutors can no longer recommend that 14- and 15-year-olds be tried as adults, including where one is charged with first-degree murder and other serious crimes; makes a person eligible for release or parole during the 25th year of incarceration if they were given a life sentence without the possibility of parole as a minor.

- *Utah*: Encourages state school districts to implement restorative justice in public schools (giving victims of juvenile crimes the opportunity to be heard, ask questions, and seek restoration).
- *North Carolina*: Allows a juvenile's criminal record to be expunged for nonviolent offenses; limits detention for certain offenses; requires a parent, a guardian, or an attorney to be present during police interrogations of any child under the age of 16; and ended a century-long practice of prosecuting teens as adults by raising the age of criminal responsibility to 18 (most 16- and 17-year-olds will be prosecuted in juvenile court).
- *Delaware*: Expands the use of civil citations instead of criminal charges, ends shackling of youths except where necessary for safety, provides free legal representation to all children charged with a crime, and makes it easier for juveniles to expunge their records.
- *North Dakota*: Funds a study of the juvenile justice process; alternative dispositions; and improvement of outcomes, probation, support services, and unwarranted institutional placements.
- *Illinois*: Directs a commission to review the current practice of restorative justice in juvenile justice systems.
- *Virginia*: Studies expungement of juvenile records.
- *Colorado*: Recommends that juvenile delinquency petitions be assigned to a single court so that those judges may develop expertise in the handling of juvenile cases.
- *Illinois*: Implements a study to develop policies and interventions to address juvenile justice disparities and disproportionate minority contact.
- *New Mexico*: Funds a strategy for educating children who have been suspended, expelled, or detained in the juvenile or criminal justice systems for misconduct.

Source: Campaign for Youth Justice, quoted in the *Chronicle of Social Change*, "In Another Big Year for 'Raise the Age' Laws, One State Now Considers All Teens as Juveniles," June 25, 2018, <https://chronicleofsocial-change.org/youth-services-insider/juvenile-justice-raise-the-age-vermont-missouri-state-legislation>; also see Samantha Solomon, "A Look at California's New Juvenile Justice Laws," ABC10, October 22, 2018, <https://www.abc10.com/article/news/a-look-at-californias-new-juvenile-justice-laws/103-606868472>; for state law changes generally, see the National Conference of State Legislatures, "Juvenile Justice Bills Tracking Database," <http://www.ncsl.org/research/civil-and-criminal-justice/ncsls-juvenile-justice-bill-tracking-database.aspx>.

An area in which child advocates are particularly adamant about reform is the use of solitary confinement. According to both The Sentencing Project and the Juvenile Law Center, children in the justice system continue to endure such confinement and the possibility of strip searches, shackling, pepper spray, restraints, and physical and sexual abuse. They may be housed in small cells 22 to 24 hours per day, with no personal belongings and no access to treatment services or peer interaction. Research shows that not only does such confinement not work, but it often makes things worse.¹⁹

They point to such cases as that of Kalief Browder. Accused of stealing a backpack at age 16, he was sent to New York City's Rikers Island jail to await trial. During the 3 years he spent there, he fought with other teenagers and correctional officers and was placed in the Central Punitive Segregation Unit (CPSU)—a euphemism for solitary confinement, with cells about 12 feet by 7 feet. He spent most of his last 17 months at Rikers, including 10 months straight, in the CPSU. After his release at age 20, he endured mental anguish from his incarceration, and after four failed suicide attempts, he took his own life.²⁰

The United States is the only country in the world that permits its youth to be sentenced to **life without parole**. In *Roper v. Simmons*, the Court banned the juvenile death penalty; also, in *Graham v. Florida* (2010), the Court banned life without parole sentences for youth convicted of *nonhomicide* crimes; and in *Miller v. Alabama* (2012), the Court banned *mandatory* sentences of life without parole

for youths convicted of homicide crimes. However, in some states a youth may still be sentenced to discretionary life without parole in homicide cases if the sentencing court, after a hearing, determines that juvenile is permanently incorrigible and incapable of rehabilitation. Twenty-eight states still allow life without parole as a sentencing option for juveniles.²¹

Finally, many juvenile justice scholars believe that detention should be avoided altogether when possible, with a comprehensive approach used instead—working with the convicted youth in their home and with the youth’s family, going to the home as often as possible; there, a therapist can get a feel for the family’s strengths and problems, see who and where the youth’s peer influences are, and thus provide the most appropriate services.²²

YOU BE THE . . . POLICE OFFICER

It is about 10:00 on a warm summer’s night. A municipal police officer is dispatched to a residence to take a theft report. Upon arrival, she is informed by the residents that a very expensive bicycle has been stolen from their front porch. The victims further inform the officer that earlier that afternoon they observed a juvenile—whom they know by name because he lives a few blocks up the street—walking on the sidewalk across the street and looking furtively at the bicycle. The officer recognizes the youth’s name by reputation (i.e., prior involvement with police).

She drives her patrol car by the youth’s home and, through the open front door, observes that the living room is dark but the television is turned on. She goes to the front door, and the juvenile is alone watching television; he comes to the door and tells the officer that his parents are sleeping. The officer knows that if she wakes the parents and (in their presence) asks the boy if he knows anything about the stolen bicycle he will deny any such knowledge.

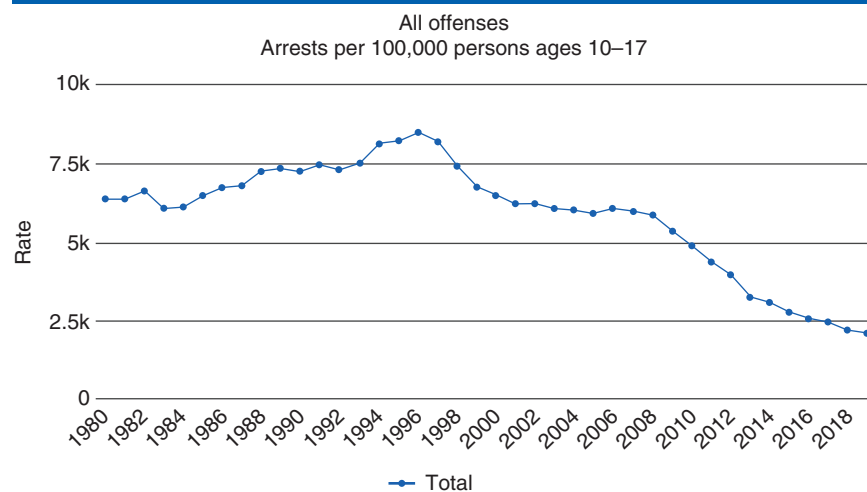
1. How should the officer proceed?
2. Is there an option available that will have a positive outcome for the juvenile, the victims, and the police officer?

Note: This relatively simple case study represents police work as it often occurs on the streets, where there is a solitary officer with little or no opportunity to immediately seek a search warrant. It also involves the Fourth Amendment (probable cause, arrest, search and seizure); the police being aware of someone’s history with and reputation for committing certain types of offenses; police policy and procedures (regarding treatment of juveniles); and, of course, police ethics. Also implicated are the *informal* nature of police work; use of discretion; and Wilson’s “watchman” order maintenance role of police; and Packer’s crime control/due process dichotomy. [In this actual case, the officer persuaded the youth to take her to where the bike was hidden (in a thick wooded area where it would likely never been found) in order to avoid involvement with the justice system. The victims were happy (having their bike returned), the juvenile was happy (not having to deal with the justice system and have his parents involved), and the officer was happy (solving the theft and returning the property).]

JUVENILE OFFENDING TODAY: EXTENT AND POSSIBLE CAUSES

There is good news in terms of the numbers of juvenile arrests in the United States. As seen in Figure 15.1, the juvenile arrest rate for all offenses reached its highest level in 1996 and then declined 75% by 2019. Why this long-running reduction in juvenile arrests? Two reasons are commonly offered: First, the drop in juvenile violent crime arrests virtually coincides with the drop in juvenile commitments to residential facilities (studies show that juveniles who are kept in the community recidivate less often than previously detained youths). Second, states are increasingly using alternative forms of punishment over incarceration (discussed later in the chapter).²³ Other possible reasons are the increasing immigrant population—a group that tends to have lower crime rates—and the fact that marijuana laws are becoming more lax.²⁴

However, ample room remains for concern with juvenile crime. According to arrest data from the Federal Bureau of Investigation’s *Uniform Crime Reports*, about 447,000 juveniles (persons under age 18) are arrested for crimes each year.²⁵

FIGURE 15.1 ■ Juvenile Arrest Rates for All Crimes

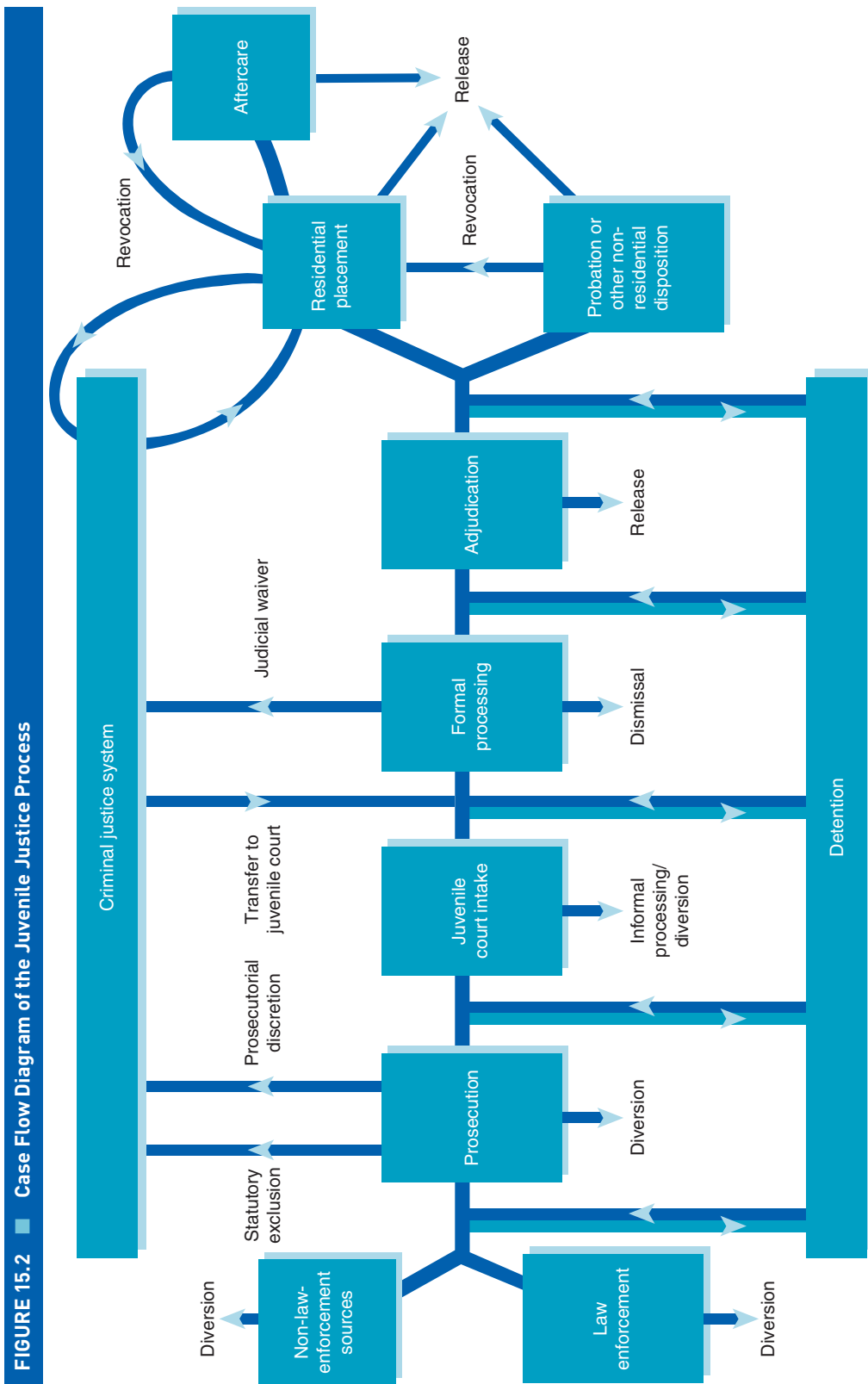
Source: Office of Juvenile Justice Delinquency and Prevention, "Juvenile Arrest Rate Trends," https://www.ojjdp.gov/ojsTaTbb/crime/JAR_Display.asp?ID=qa05200.

Many theories have been offered by experts to explain juvenile crime; however, no single theory has been universally accepted. Nevertheless, experts agree that a correlation exists between juvenile crime and the following factors:

- *Family dysfunction:* Family background is one of the most potent influences on juvenile development. Dysfunctional families transfer dysfunctional norms to their children. Juveniles who live in unstable homes and social environments are deemed to be *at-risk* children because of their vulnerability to detrimental influences. Such environments can contribute to antisocial behavior in children, often resulting in criminally deviant behavior later in life.
- *Drug use and deviance:* Alcohol, tobacco, and other illicit drugs are often consumed by justice-involved juveniles.
- *Socioeconomic class:* Children from poor and working-class backgrounds are much more likely than other children to engage in delinquent behavior. Studies of marginalized persons living in inner-city areas have found that large numbers of this population are caught in a chronic generational cycle of poverty, low educational achievement, teenage parenthood, unemployment, and welfare dependence.
- *Educational experiences:* Academic achievement is considered to be one of the principal stepping stones toward success in American society. Ideally, opportunities for education, mentoring, and encouragement to excel would be equally available for all children. Unfortunately, that is not the situation. Socioeconomic and demographic factors can also have an impact on educational opportunities and performance. Children from economically challenged backgrounds often experience a very different educational environment in comparison to middle-class children, such as in inner-city, economically deprived environments, where educational achievement is often not commonly encouraged—or achieved.²⁶

Case Flow of the Juvenile Justice Process

This section describes the convicted young person's flow through the juvenile justice process, using as a guide the diagram shown in Figure 15.2.²⁷



Source: Office of Juvenile Justice and Delinquency Prevention, https://www.ojjdp.gov/ojstatbb/structure/_process/case.html.

Note that each state's processing of law violators is unique, depending on local practice and tradition; therefore, any description of juvenile justice processing must be general, outlining a common series of decision points:

1. *Law enforcement diverts many young persons convicted of offenses out of the justice system.* Young persons who have violated the law generally enter the juvenile justice system through police contacts, but school officials, social services agencies, neighbors, and even parents provide information about a juvenile's crime that commences the process. At arrest, a decision is made either to send the matter further into the justice system or to divert the case out of the system, often into alternative programs. Usually, the police make this decision after talking to the victim, the juvenile, and the parents and after reviewing the juvenile's prior contacts with the juvenile justice system. Examples of alternative programs include drug treatment, individual or group counseling, or referral to educational and recreational programs.
2. *A non-law enforcement agency may divert young people convicted of offenses out of the justice system.* The court intake function is generally the responsibility of the juvenile probation department and/or the prosecutor's office. At this point, intake must decide whether to dismiss the case, handle the matter informally, or request formal intervention by the juvenile court. To make this decision, an intake officer first reviews the facts of the case to determine if there is sufficient evidence to prove the allegation. If there is not, the case is dismissed. If there is sufficient evidence, intake will then determine if formal intervention is necessary. About half of all cases referred to juvenile court intake are handled informally. Most informally processed cases are dismissed. In the other informally processed cases, the juvenile voluntarily agrees to specific conditions for a specific period. Conditions may include victim restitution, school attendance, drug counseling, or a curfew. If the juvenile successfully complies with the informal disposition, the case is dismissed. If, however, the juvenile fails to meet the conditions, the intake decision may be to formally prosecute the case.
3. *During the processing of a case, a juvenile may be held in a secure detention facility.* Juvenile courts may hold persons accused of offenses in a secure detention facility if the court believes it is in the best interest of the community or the child. After arrest, a youth is often brought to the local juvenile detention facility by the police. Juvenile probation officers or detention workers review the case and decide if the juvenile should be held pending a hearing by a judge. In all states, a detention hearing must be held within a period defined by statute, generally within 24 hours. At the detention hearing, a judge reviews the case and determines if continued detention is warranted. As a result of the detention hearing, the youth may be released or detention continued. Detention may extend beyond further hearings.
4. *Cases may be filed in either juvenile or criminal court.* In many states, the legislature excludes certain (usually serious) offenses from the jurisdiction of the juvenile court regardless of the age of the accused. In other states and at the federal level under certain circumstances, prosecutors have the discretion to either file criminal charges against juveniles directly in criminal courts or proceed through the juvenile justice process. The juvenile court's intake department or the prosecutor may petition the juvenile court to **transfer** (also termed **remand**) jurisdiction to criminal court. The juvenile court also may order referral to criminal court for trial as adults. In some jurisdictions, juveniles processed as adults may upon conviction be sentenced to either an adult or a juvenile facility.
5. *A disposition is reached in the case.* At the **disposition** hearing, recommendations are presented to the judge. The prosecutor and the youth (usually through their guardian *ad*

litem—often an attorney or other trained professional appointed by a court to help protect the juvenile’s rights and determine what solutions would be in their best interests) may also present dispositional recommendations. After considering options presented, the judge orders a disposition in the case. Most juvenile dispositions are multifaceted. In disposing of cases, juvenile courts usually have far more discretion than adult courts. In addition to such options as probation, commitment to a residential facility, restitution, and fines, state laws grant juvenile courts the power to order removal of children from their homes to foster homes or treatment facilities. Juvenile courts also may order participation in special programs aimed at shoplifting prevention, drug counseling, or driver education. Once a juvenile is under juvenile court disposition, the court may retain jurisdiction until the juvenile legally becomes an adult (at age 21 in most states). In some jurisdictions, young persons convicted of offenses may be classified as youthful offenders, which can lead to extended sentences.

6. *The judge may order the juvenile committed to a residential placement.* Residential commitment may be for a specific or indeterminate period. The facility may be publicly or privately operated and may have a secure prisonlike environment or a more open, even homelike setting. In many states, when the judge commits a juvenile to the state department of juvenile corrections the department determines where the juvenile will be placed and when the juvenile will be released. In other instances, the judge controls the type and length of stay. In these situations, review hearings are held to assess the juvenile’s progress.
7. *The juvenile receives aftercare, similar to adult parole.* Following release from an institution, the juvenile is often ordered to a period of aftercare or parole. During this period, the juvenile is under supervision of the court or the juvenile corrections department. If the juvenile does not follow the conditions of aftercare, they may be recommitted to the same facility or to another facility.²⁸



Residential commitment may provide juveniles with either a secure prisonlike environment or a more open, even homelike setting. This teen lives in a small, homelike setting that stresses personal development over isolation and punishment.

Loic Venance/AFP/Getty Images

PRACTITIONER'S PERSPECTIVE

JUVENILE COURT COUNSELOR



Name: Jennine Hall

Position: Juvenile Court Counselor

Location: Colorado

What is your career story? I currently work for the Division of Youth Corrections in the state of Colorado. I am what you call a clinical trainer. I train all of the clinical staff that are rehabilitating kids in the state of Colorado that are currently in custody. When I first started off, I was working with at-risk adults with underlying mental health issues. I had a friend that was working with kids in juvenile justice, and she suggested that I do it too. I was doubtful at first, but I decided to shadow her for a day and fell in love with the adolescent population and, more importantly, kids that have problematic behavior that inevitably end up with criminal prosecutions and things of that nature. So quickly thereafter, I applied and ended up getting an entry-level position. Although my experience really was more in the mental health field, the entry-level position allowed me to get my feet wet, so to speak, with this population. I literally fell in love, and I have been there over 16 years now. I never have a dull day. It's just been a wonderful career for me.

What are some challenges you face in this position? It's always challenging when you're working with an at-risk population, especially when it consists of children or adolescents. The community places people that work in juvenile justice in a very high level of trust—not only trust with regard to how to effectively rehabilitate a criminal offender, but also really trusting us as professionals to take care of these kids while in custody and understand their individualized needs as they go through the rehabilitative process. Think of a child that you love and imagine walking into a secure facility with them and walking out without them. I think that really speaks to the level of trust that our taxpayers and stakeholders expect of people in this profession. It's a high level of authority and trust that they place on us.

Do you see any common trends in this position? The field has totally changed in my 16 years in it, especially in research. Evidence-based practice has completely transformed the juvenile justice system. When I first came into the system as a juvenile parole officer, we really didn't know what worked. There were state- and nationwide inconsistencies on how to rehabilitate the juvenile offender. But since then, there have been huge bodies of research that have given us a road map. Our system has really begun to integrate programs and principles into everything we do, and that has made a world of difference in the services we provide to kids and to families. It's definitely one of those jobs that if you expect one day to walk in and say, "I've got it, I know everything," the juvenile justice field might not be the right field for you because it's changing constantly.

What role does diversity play in this position? Diversity plays a huge role. I think there was a time when we would say the word “diversity” and people would think specifically in terms of race and gender. But now, diversity is much broader than that, and it needs to be. We need to be a system that has people from all walks of life, people with all different types of experience. You don’t want a system where everybody thinks and talks and acts alike. You want to create bodies of employees that breed innovation and creativity. That’s what diversity offers to organizations such as juvenile justice. It’s critical because we work with people from all walks of life. It’s important for us to be open-minded and curious about the people we’re working with and the world in which they live.

The Problem of Labeling

Looking at Steps 1 through 7 in the previous section—after the youth has been apprehended, adjudicated, and placed—there is a concern they will be officially labeled as deviant. A consequence of labeling in our society is that the individual may never be redeemed in the eyes of the community. Cox et al. stated that when labeling people who have committed offenses, “John Q. Convict does not become John Q. Citizen. Instead, he becomes John Q. Ex-Convict.”²⁹ Being labeled can thus make it extremely difficult for one who is a former “deviant” to find employment and succeed in society. Furthermore, labeling can change the convicted young person’s self-image to one that is negative. This “disintegrative shaming” (negative stigmatization) morally condemns and isolates the individual and does not attempt to reintegrate the youth into the larger society. Conversely, a better approach is to practice “reintegrative shaming,” where there is an attempt to reconnect the stigmatized person to the larger society.³⁰

Is There a “School-to-Prison Pipeline”?

Some authors believe there is a **school-to-prison pipeline**—often perceived as grounded in racial discrimination—that is an epidemic plaguing our schools (Black youths are 2.3 times as likely to be arrested as white youths³¹ and are 4.4 times more likely to be incarcerated as white youths).³² In sum, students who are expelled from school for disruptive behavior are then compelled to live in the homes and neighborhoods of negative influences where their problems began, causing them to become stigmatized, more hardened and embittered, and often more engaged in criminality.

Regarding the possible link of racial discrimination with this “pipeline,” according to Rocque and Paternoster, African American youth fare worse in schools than whites in several areas: They show less interest in school activities, have lower grades, are more likely to be held back and to be in special education, and have higher rates of incarceration.³³ Added to those factors is their lower socioeconomic status and their environment, in which the youth’s peers may dismiss and ridicule academic success, as well as the increased likelihood that they will be singled out for punishment in school—and a school-to-prison pipeline trajectory for marginalized youth is present.

What can be done about this pipeline or trajectory? First, according to some educators, is the need to realize that suspensions do not really work—they merely get the individual out of the classroom. Next is the need to examine existing discipline structures to ensure they help, rather than hurt, students. Examples of the need to reassess discipline policies include the youth who spent 21 days in a juvenile detention center for talking back in class, the 7-year-old who was suspended for chewing his Pop-Tart into the shape of a gun, the senior expelled for forgetting the pocketknife in her purse, and seven teenagers who were arrested and charged with disorderly conduct for an end-of-the-year water balloon fight.³⁴ Some school districts have signed “memorandums of understanding” with local law enforcement agencies that keep youth committing minor offenses out of criminal courts.³⁵ Some argue that the presence of school resource officers in schools serves to amplify the school-to-prison nexus,³⁶ as the debate about the pros and cons of assigning police officers to schools continues.

Others have attempted something called “restorative practices,” which entails more adult involvement in letting youths know that their behavior is detrimental to the needs of the

community and to themselves. It involves getting to the root cause of the problem so that it does not recur, using restorative justice circles; in this way, adults show children that they care about them and do not wish to suspend them from the classroom.³⁷ However, as noted by researchers, “the capacity of restorative justice to limit the school-to-prison pipeline may remain unfulfilled unless it can disrupt current social-organizational structures that maintain racial inequity in institutional structures.”³⁸

YOUTH GANGS: AN OVERVIEW

Although it is difficult to arrive at a common definition of a youth gang—because state and local jurisdictions often devise their own definitions—it is generally defined as a group or association of peers sharing a gang name, recognizable symbols, and identifiable leadership; having an identified geographic territory; holding regular meetings; and being collectively engaged in illegal activities. Second, the age range given for youth gang members is wide—about 12 to 24 years—with gang membership being (historically) more common at the top of the age range.³⁹

Youth Gang Membership

One study estimated that there are more than 1 million juvenile gang members in the United States, more than 3 times the number estimated by law enforcement.⁴⁰ There is some good news in the study, however. Gangs have a high turnover rate (about 36%), with about 400,000 youth joining gangs and another 400,000 youth leaving gangs every year. The study belies a common misconception concerning gangs: that once a person joins, they stay in the gang for many years. Instead, researchers find that for young gang members, the money, cars, girls, and protection is more myth than reality.⁴¹ Most youths who join a gang remain active members for only about 12 years. Another positive finding is that even in the most gang-ridden areas of the United States, most youths do not join a gang.⁴²

Current juvenile gang statistics are becoming increasingly difficult to find. This is at least partially due to the changing nature and structure of these groups, making them harder to define.⁴³ Current gang research must deal with the shifting landscape around gangs and gang issues, including changes in gang and social economies, increasing use of the internet and social media in gang activities, increasing international gang operations, and changes in gang membership (including more women and LGBTQ individuals).⁴⁴

What Works With Youth Gangs?

Targeted patrols or a dedicated gang unit (or officer) are the measures used most frequently to combat gangs, in addition to participation in a multiagency gang task force and coordinated probation searches. Less frequently used are civil gang ordinances or injunctions. A civil gang injunction is a court order issued in a civil case against a criminal street gang and its members to prohibit certain behavior within a defined safety zone—which may include associating together in public and violating trespass and curfew laws.⁴⁵

Finally, as with other crime and disorder problems, arrests alone do not solve problems in the long term. A comprehensive, multifaceted approach to the gang problem is needed. Such an approach would include fundamental changes in the way schools operate (acting as community centers involved in teaching, providing services, and serving as locations for activities before and after the school day); job skills development; a range of services provided to families (parental training, child care, health care, and crisis intervention); changes in the way the criminal justice system—particularly policing—responds generally to problems, by increasing their understanding of the communities they serve; and intervention and control of known gang members—either by diverting peripheral members from gang involvement and criminal activity or by arresting and incapacitating hard-core gang members, thus sending a message that the community will not tolerate intimidating, violent, and/or criminal gang activity.⁴⁶

AFTERCARE AND REENTRY

Although no program evaluations have shown a conclusive means of doing so, as with incarcerated adults, a youth who is about to reenter the community after being in a custodial facility sorely needs aftercare services. Given that up to two thirds of all youths will be rearrested and one third will be reincarcerated within a few years after release, it is imperative that support services be in place to facilitate this reentry. Services should include wraparound support services that are collaborations between family members and a transition specialist to ensure the transition is successful. Aftercare must also address the numerous barriers to school reentry that are commonly experienced after juvenile justice system involvement.⁴⁷ Because many of these youths have depression, schizophrenia, other mental disorders, or learning disabilities, it is important that aftercare includes helping them to develop skills for participating in the workforce, school, and/or independent living; interacting appropriately with others; and developing a positive self-image and the ability to set personal goals.⁴⁸

SIGNIFICANT COURT DECISIONS

In the mid-1960s to the mid-1970s, several important decisions by the U.S. Supreme Court addressed and expanded the legal rights of juveniles. Then, from 2010 to 2016, there was another spate of decisions.

Right to Counsel

Kent v. United States (1966) involved a 16-year-old boy who was arrested in the District of Columbia for robbery, rape, and burglary.⁴⁹ The juvenile court, without conducting a formal hearing, transferred the matter to a criminal court, and Kent was tried and convicted as an adult. Kent appealed, arguing the transfer to adult court without a hearing violated his right to due process. The Supreme Court agreed and also decided there must be a meaningful right to representation by counsel—who must be given access to the documents being considered by the juvenile court in making its decision—and that the court must also provide reasons for transfer (see Case Study 15.2 for further review).⁵⁰



The U.S. Supreme Court has decided that juveniles have the right to be represented by counsel as well as several other procedural rights prior to and during their involvement with the juvenile justice process. Pictured is Nathaniel Abraham; in 1999, he was tried as an adult and convicted of a murder he committed at age 11 in Michigan.

AP Photo/Richard Sheinwald

The Centerpiece: In Re Gault

Gerald Gault, age 15, was accused of making an obscene call to a neighbor. The police picked up Gault and took him to the juvenile detention center while his parents were at work. His parents were told later that a hearing would be held the next day, but the charges against Gault were not explained. The complaining neighbor did not show up at the hearing; rather, a police officer testified to what the neighbor had said. Gault, who had no attorney present, denied making the obscene calls. No record was made of the court testimony, and there was no jury present; only a judge heard the case, who declared Gault to be a delinquent and ordered him to be sent to a state reform school—until he was released or turned 21 years old,⁵¹ whichever came first. Ultimately, Gault filed a *writ of habeas corpus*, claiming he had been denied due process rights at his hearing. This writ was denied, and state courts offered him no relief.

The case was eventually taken up by the U.S. Supreme Court in 1967.⁵² The Court noted the historically different treatment of juveniles, including their often being committed to an institution for several years, where “his world is peopled by guards, custodians, state employees, and ‘delinquents’ confined with him for anything from waywardness to rape and homicide.” Finding that the Fourteenth Amendment is not “for adults alone,”⁵³ the Court held that juveniles were entitled to the same basic procedural safeguards afforded therein, including advance notice of charges; right to counsel and to confront and cross-examine witnesses; and the privilege against self-incrimination.

Case Study 15.2

Forty-Five Years After *Gault*: The Experience of Corey Bauer

Corey Bauer, at age 11, a diminutive (five feet-five inches tall) youth who loved four-wheeling in the woods, became depressed upon the death of his grandmother. He was caught shoplifting a pack of cigarettes from a grocery store and was placed on probation. Soon he was caught again, this time for violating his probation by breaking school rules: smoking, skipping classes, and carrying scissors through a metal detector. He was then sent to a juvenile court and placed in detention in Louisiana. Neither he nor his mother was advised of his right to legal counsel. Instead, they were informed that police and court personnel would help get him “back on track” by providing counseling services instead of a defense lawyer who would just “slow things down.”

After Corey’s release from detention, his situation worsened when he was arrested for vehicle burglary and possession of illicit drugs. Back in court, Corey’s probation officer recommended that he be placed in “state secure care,” where he would supposedly receive mental health and substance abuse treatment and education. Again, with no attorney or advocate present, Corey accepted a plea bargain and agreed to enter this program.

In reality, Corey, then age 14, would be sent to what was effectively a maximum-security prison for youth in northwestern Louisiana—a compound of brick buildings with razor-wire fences, security checkpoints, and boys in orange jumpsuits. At her first visit, Corey’s mother was shocked to find that Corey had a footprint on his rib cage, a black eye, and a knot on his forehead. He informed her he had been locked up, beaten by guards, placed in solitary confinement, and sexually assaulted. He would spend the next 6 years, until he was 20 years old, in and out of adult and juvenile prisons. In addition to his horrific treatment, the lack of legal counsel stands out as a significant aspect of Corey’s criminal and judicial affairs.

In some jurisdictions around the nation, as many as 80% to 90% of young people who are convicted of offenses waive their right to counsel, not realizing that doing so can later contribute to a loss of employment opportunities, access to student loans, and other benefits. Do you believe all youths should have a right to counsel at hearing or trial (whether requested or not)? Explain.

Source: James Swift, “A Mother’s Mission,” Juvenile Justice Information Exchange, July 29, 2013, <https://jjie.org/2013/07/29/a-mothers-mission/>; also see Lauren Pearle, “Broken Promises: The Challenge of Juvenile Justice,” ABC News, <https://abcnews.go.com/TheLaw/story?id=3183886&page=1>.

Burden of Proof Standard

In 1970, *In re Winship* involved a 12-year-old boy convicted of larceny in New York.⁵⁴ At trial, the court relied on the “preponderance of the evidence” standard of proof against him rather than the more demanding “beyond a reasonable doubt” standard used in adult courts. The U.S. Supreme Court reversed Winship’s conviction on grounds that the “beyond a reasonable doubt” standard had not been used.

Trial by Jury, Double Jeopardy, and Executions

In *McKeiver v. Pennsylvania* (1971), Joseph McKeiver and another juvenile were charged with robbery. Both were denied a request for a jury trial by the juvenile court; the state superior court, state supreme court, and a federal appeals court all upheld the lower-court decision, finding no constitutional right to a jury trial for juveniles. The U.S. Supreme Court, however, said that juveniles do not have an absolute right to trial by jury; whether or not a juvenile receives a trial by jury is left to the discretion of state and local authorities.⁵⁵ Then, in *Breed v. Jones* (1975), the Court concluded that the Fifth Amendment protected juveniles from double jeopardy, or being tried twice for the same offense.⁵⁶ (Breed had been tried both in California Juvenile Court and later in Superior Court for the same offenses.) Finally, the U.S. Supreme Court held in 2005 that the Eighth and Fourteenth Amendments forbid the execution of young persons convicted of crimes who were under the age of 18 when their crimes were committed.⁵⁷

Right to the *Miranda* Warning

In 2011, the U.S. Supreme Court expanded the *Miranda* warning for suspects to include children questioned by police in school. In *J. D. B. v. North Carolina*, a 13-year-old North Carolina boy was taken from his classroom by a police officer and questioned, without an attorney or guardian present, in a conference room (where a police investigator and three school officials were present) concerning a string of burglaries. The boy eventually confessed, and his attorney lost his state appeal in trying to have the confession thrown out due to the boy’s age and lack of *Miranda* warning (the state had argued that the boy should have felt free to leave the room and, therefore, was not in custody). The Supreme Court agreed with his attorney, saying for the first time that age must be considered in determining whether a suspect is aware of their rights.⁵⁸ This decision tells police they cannot avoid giving a youth the *Miranda* warning simply by questioning the youth at school, away from their parents or guardians; it is thus expected to force police to adopt a “when in doubt, give the *Miranda* warnings” approach with juveniles.

Going Global 15.1

Juvenile Torture in Iraq

By now, it seems unlikely that humans will ever cease torturing other humans in their quest to obtain a confession for some alleged act(s), even though the accuracy of such confessions is questionable at best. But such has been the case in a juvenile facility in Kurdistan, northern Iraq, where interrogators attempt to ferret out and eradicate the Islamic State (ISIS) in part by torturing children, according to Human Rights Watch. Young boys were subjected to beatings, prolonged stress positions, and electric shock; they had no access to lawyers, and they were not allowed to read the confessions they allegedly wrote and were forced to sign.

Human Rights Watch interviewed 37 boys, ages 14 to 17, at a children’s facility encircled by high walls and concertina wire—one of three such facilities in northern Iraq. The boys had been charged with or convicted of ISIS affiliation. Interrogators beat the children with plastic pipes, electric cables, or rods, and administered electric shocks. They threatened to break the boys’ bones if a confession was not forthcoming. All but one youth interviewed said they eventually confessed in order to stop the torture—but when they later told the trial judge of the coerced confession, they were ignored. None of the boys were brought before a judge within 24 hours of their initial detention, as required by the Kurdistan penal code, and only a few had legal representation. None

of them were allowed to communicate with their families while in custody, and most were denied phone calls until after sentencing.

Many of these children have already been scarred by conflict and ISIS abuses, according to Human Rights Watch. International human rights law prohibits torture and other ill treatment and dictates that children should be detained only as a last resort and for the shortest appropriate period. The law also requires that assistance be provided to children illegally recruited by armed groups or forces and that children charged with criminal offenses have the right to legal assistance and a prompt determination of their case. They also have the right not to be compelled to give testimony or confess guilt, and statements derived from torture cannot be used as evidence in court.

Source: Adapted from Human Rights Watch, “Kurdistan Region of Iraq: Detained Children Tortured,” January 8, 2019, <https://www.hrw.org/news/2019/01/08/kurdistan-region-iraq-detained-children-tortured>.

IN A NUTSHELL

- Quakers in New York City in 1825 sought to establish a balance between two camps—people wanting to see justice done with young people convicted of offenses and those not wanting them to be incarcerated; they founded the first house of refuge.
- At about the middle of the 19th century, the house of refuge movement evolved into the slightly more punitive reform school, or reformatory, approach, which involved segregating young people convicted of offenses from incarcerated adults, removing the young from adverse home environments, minimizing court proceedings, and providing indeterminate sentences.
- In 1870, the Illinois Supreme Court held it unconstitutional to confine in a Chicago reform school a youth who had not been convicted of criminal conduct or afforded legal due process; thus, the juvenile court movement began.
- In 1899, the Illinois legislature enacted the Illinois Juvenile Court Act, creating the first separate juvenile court.
- In the post–World War II period, status offenses became a separate category, covering acts that would not be criminal if committed by an adult.
- Experts agree that a correlation exists between juvenile crime and family dysfunction, drug use and deviance, socioeconomic class, and educational experiences.
- The prevailing philosophy of the treatment of juveniles is *parens patriae*, meaning that the “state is the ultimate parent” of the child; the doctrine of *in loco parentis* means the state will act in place of the parent.
- An idealistic contrast exists between the juvenile court process and the criminal procedure for adults, involving different terminology and court processes.
- Most states’ juvenile court decisions and legislation contain three underlying principles: the presumption of innocence, the presumption of the least amount of involvement with the system, and the presumption of the best interest of the minor.
- The primary goals of the juvenile justice system are separation from adults, youth confidentiality, community-based corrections, and individualized justice of minors.
- The newly enacted Juvenile Justice Reform Act of 2018 attempts to provide more protections for youth convicted of crimes, particularly concerning racial disparities and detention.
- The juvenile arrest rate for all offenses reached its highest level in 1996, and then declined 72% by 2017; however, more than 600,000 juveniles are arrested each year.

- A consequence of labeling juveniles is that they may never be redeemed in the eyes of the community.
- Some authors believe there is a school-to-prison pipeline, whereby students who are expelled from school become more engaged in criminality because of being in their neighborhoods with negative influences and becoming stigmatized and more hardened.
- Although the membership of youth gangs now exceeds 1 million, the good news is that about as many youths leave gangs each year as join them; also, youths do not remain in gangs forever, and there are successful programs that work to help get youths out of gangs.
- As with incarcerated adults, a youth who is about to reenter the community after being in a custodial facility sorely needs aftercare services to reduce their chances of being rearrested and reincarcerated.
- Several important rights have been granted to juveniles by the courts in the areas of due process, representation by counsel, advance notice of charges, confronting and cross-examining witnesses, the privilege against self-incrimination, the burden of proof standard, and having *Miranda* warnings given.
- The U.S. Supreme Court has held that the Eighth Amendment's ban on cruel and unusual punishment prohibits mandatorily sentencing a young person who commits murder to serve a term of life without parole. Recently, the Court expanded its original decision to make it retroactive.

KEY TERMS

Disposition (p. 374)	<i>Parens patriae</i> (p. 366)
Houses of refuge (p. 364)	PINS (person in need of supervision) (p. 365)
Idealistic contrast (p. 366)	Presumption of innocence (p. 367)
Illinois Juvenile Court Act (1899) (p. 365)	Reformatory (p. 364)
In loco parentis (p. 366)	School-to-prison pipeline (p. 377)
Juvenile court (p. 365)	Status offense (p. 365)
Life without parole (p. 370)	Transfer (remand) (p. 374)

REVIEW QUESTIONS

1. How would you describe the early treatment of juveniles, including houses of refuge and reformatories?
2. What contributions were made by the Illinois legislation that created the first juvenile justice/court system?
3. What are the major differences in philosophy and treatment (to include the “idealistic contrast”) between incarcerated juveniles and incarcerated adults?
4. What is the definition of a status offense?
5. What are the prevailing theories underlying juvenile criminality causation?
6. How would you describe the protections afforded under the Juvenile Justice Reform Act of 2018 and its previous versions?
7. How would you describe the recent shift in policy, principles, and processes as they now exist in the juvenile justice system, as well as in legal protections (including the state of life without parole sentences across the United States)?
8. How would you explain the process and flow of cases through the juvenile justice system?

9. For what reason(s) might a young person convicted of an offense be transferred to the jurisdiction of an adult criminal court?
10. What concerns exist with labeling of young persons convicted of offenses?
11. Is there evidence that a school-to-prison pipeline exists? If so, what are some reasons for and possible solutions to it?
12. What is the current membership of juveniles in gangs? What approaches might be taken to keep or get them out of gangs?
13. What are some reasons for, and approaches to, providing formal aftercare and reentry services for juveniles as they leave custodial confinement and return to their homes and neighborhoods?
14. What due process rights were given to juveniles in *In re Gault*?
15. Aside from the rights secured in *Gault*, what other rights do juveniles now have in their justice system?

LEARN BY DOING

1. Your criminal justice class has been assigned a group project, with each group citing what it believes to be the major factors contributing to juvenile delinquency and related policy implications. Develop your argument using the following article: Thornberry, T. P., Huizing, D. H., & Loeber, R. (2004, September). The causes and correlates studies: Findings and policy implications. *Juvenile Justice*, 9(1). www.ncjrs.gov/html/ojdp/203555/jj2.html.
2. Interview a local criminal justice professional about the topics presented in this chapter regarding the treatment of juveniles in your area or region. As examples, you can inquire of area juvenile judges, facility staff, probation officers, and police officers concerning their work generally, as well as the use of secure and nonsecure confinement facilities in your area, whether they believe there exists a school-to-prison pipeline, how often young people convicted of offenses are transferred to the adult courts or placed in solitary confinement, and the aftercare/reentry services that are provided.
3. Consider that, like other individuals, gangs members use social media. Law enforcement have expanded their investigations to monitor social media gang activity to reduce gang violence. However, some have argued that most confrontational posts by gang-associated youth do not escalate to real-life violence and that, in some instances, offline violence is deterred by social media use.⁵⁹ Imagine that you could interview juvenile gang members about their use of social media. Develop questions you would ask to learn more about this topic.
4. Conduct a survey of your family and friends. Develop a survey questionnaire that will measure their opinions about school resource officers (e.g., do they feel they . . . are needed, increase safety, unfairly punish students). Explain that this is a class project, post your survey on social media, and tally the results.



©iStockphoto.com/AndreyPopov

©iStockphoto.com/USA-TARO

©iStockphoto.com/solarseven

16

ON THE CRIME POLICY AND PREVENTION AGENDA

Immigration, Mass Murder, the Cyber Threat

LEARNING OBJECTIVES

As a result of reading this chapter, you should be able to

- 16.1** Explain the subject of immigration in the United States, the enforcement challenges posed to the criminal justice system, and what can be done to address the issue.
- 16.2** Discuss mass murder, its extent and methods, links to mental illness, and what law enforcement and the courts are doing to prevent and deal with these critical events.
- 16.3** Identify who is targeted by cybercriminals, the types of people who commit these crimes, the methods used, and what law enforcement and the courts are doing to address this international problem.

ASSESS YOUR AWARENESS

Test your knowledge of selected criminal justice policy issues by responding to the following true–false items; check your answers after reading this chapter.

- 1. The executive branch of the U.S. government makes all immigration enforcement decisions.
- 2. Research on criminality of U.S. immigrants shows that many more such persons are arrested per capita for violent crimes than are nonimmigrants.
- 3. Recently the United States expelled about a half million people attempting to cross its border by using legislation barring anyone who may have a communicable disease.
- 4. A commonly accepted definition of mass murder is one in which as a single incident leaves two or more people dead.
- 5. The vast majority of people committing mass murders were spontaneous in their actions, not studying other mass murders or engaging in some type of planning.
- 6. Keeping guns away from people who have a history of mental illness and/or violence is one of the best means of decreasing rates of firearm homicide.
- 7. Insurance companies, professional sports teams, and even police departments have been threatened by cyberattacks.
- 8. Cyberattacks fall into three categories: those that disable the operations of another system by shutting it down for ransom, those aiming to gain access to unauthorized data, and those that wish to cause automobile and airplane crashes.
- 9. Due to their frequency and complicated nature, many special courts are now dedicated to solely trying cases involving cybercrimes.

Answers can be found on page 401.

INTRODUCTION

This chapter briefly examines three “hot-button” issues in terms of the policy and prevention issues they pose: immigration, mass shooting, and the cyber threat. Each has deservedly received widespread attention and publicity and been the subject of great concern, but they give no indication of abating in the foreseeable future. Note, however, that these topics all lend themselves to rapid change in terms of their nature and extent. Changes in legislation, court decisions, public opinion, and the economy, as well as new approaches by the criminal justice system itself, might indeed result in considerable change over the next few years in this chapter’s “snapshot” of today.

The chapter begins with coverage of immigration, looking at this subject from its social, political, economic, and humanitarian perspectives as well as what we know about criminality of

unauthorized immigrants, challenges posed by migrants and **asylum seekers**, and efforts by various parties to address the issue. The second topic, mass murder, will include its definition, extent, some traits common to people who commit mass murders, efforts at prevention, the mental illness connection, and what legislation, law enforcement, and courts can and are doing to address the problem. Finally, cybercrime is discussed in terms of targets and ransom payouts, types and methods, and again, what various entities are doing to try to stem the problem. Several case studies further explain or illustrate the issues discussed in this chapter, which concludes with review questions and exercises.

IMMIGRATION: SEEKING A BETTER LIFE

The federal Department of Homeland Security (DHS) estimates there are about 11.4 million unauthorized immigrants in the country.¹ The top five countries of origin are Mexico, El Salvador, Guatemala, India, and Honduras (with China close behind at number six),² and the leading states of residence of unauthorized immigrants are California, Texas, Florida, New York, Illinois, and New Jersey.³

What should be done with those undocumented immigrants who are already residing in the United States? Should all such persons wishing to migrate here be allowed to cross its borders? Or rather, should all such persons be banned? Or, thirdly, should only *some* be admitted onto our soil? Should the United States erect walls to separate it from its neighbors? Should it deny protection to victims of gang and domestic violence from other countries who seek asylum here?

These are very complex social, political, economic, and humanitarian questions, each of which contains dozens of additional issues and questions. People are willing to risk death crossing unforgiving deserts and riding on precarious watercraft and railway lines to obtain a better and safer life. Still, **immigration** has become one of the most vexing and polarizing challenges of our time, and certainly, our law enforcement agencies are often caught in the middle while the political battles are being waged. Making the issue even more fraught with angst is that U.S. citizens themselves do not seem to agree on whether immigration is good or bad; it is argued that, on the one hand, the nation is richer in culture, diversity, and civilization as it is reshaped by people from around the world. Conversely, however, immigration also carries illegal and dangerous aspects that threaten the nation's security. Nor do we agree on whether immigration helps (through reduced labor costs) or harms (via displaced U.S.-born workers, lower wages) the U.S. economy (an estimated 8 million undocumented immigrants now work in all sorts of occupations).⁴

Each year the U.S. president, in consultation with Congress, sets the annual refugee admissions ceiling and allocations by region of origin. The executive branch also makes immigration enforcement decisions, which can vary considerably as political dynamics change. As an example, the Trump administration attempted to follow several “planks” in the platform of his campaign: to build a substantial wall on the border with Mexico (discussed later in the chapter), initiate a “pause” on granting of green cards (or permanent resident card) and a travel ban from certain countries, and act against “all removable aliens,” among other priorities.⁵ But in February 2021, newly elected President Joe Biden took a far different tack, immediately halting construction of the wall (a few months later he would later restart its construction in Texas to stem the flood of illegal immigrants, also discussed later) and presenting a 350-page immigration bill to Congress (termed the **U.S. Citizenship Act of 2021**); if passed, the legislation would forge a path to citizenship for the undocumented immigrants who were currently living in the United States, expand family-based immigration, promote migrant worker visas, provide \$4 billion to Central American countries for economic and security purposes, expand the means for new arrivals to have protected legal status, and provide new technologies for additional border security.⁶ (After being reviewed by about a dozen committees in the U.S. House of Representatives, the bill effectively stalled since mid-2021.)⁷

Another political dispute arose in 2021 concerning the so-called 287(g) Program (see an overview in Case Study 16.1).

YOU BE THE . . . ATTORNEY GENERAL

Should local police patrol borders and assist in immigration enforcement?

A legal question has arisen concerning whether local police departments and sheriff's offices should be assisting with immigration enforcement—a task that, under current law, is a federal responsibility. Nevertheless, local officers often answer calls concerning migrants trespassing on private land or smuggling, especially during the recent surge of migrants coming up from the South. This, it is argued, is primarily due to border patrol agents being spread so thin. Critics argue that such assistance is undesirable because these officers are largely untrained in immigration law or engaging with migrants, these efforts can lead to racial profiling, and using such officers could dissuade immigrants from reporting crimes.⁸ Another unusual recent development, in mid-2021, was the Florida governor sending law enforcement officers from 13 state agencies to help with immigration enforcement in Texas and Arizona after their governors sent out a call for help.⁹

1. As stated in the heading, *should* local police patrol borders and assist in immigration enforcement?
2. If yes, at what point would it become overly dangerous for a local community to have its officers engaged in immigration enforcement?
3. If no, then if the number of persons seeking asylum and permanent residence in the United States were to continue to overwhelm federal officers, what other means of patrolling the borders and general immigration enforcement might be employed?

The Criminality Question

Another controversial aspect of immigration in general is whether undocumented immigrants commit more crimes than U.S.-born citizens. Certainly, widely publicized murders committed by these individuals—such as the murders of four people in northern Nevada in early 2019¹⁰ and an Iowa college student in mid-2018¹¹—helped to foster a national debate and angst among many Americans who believe, as one national news commentator put it, that “illegal immigration kills Americans.”¹²

Do immigrants to the United States commit more crimes or fewer crimes? The research is frustrated by the fact that local police often do not list the immigration status of those persons arrested. Today, all attempts to research the question have flaws; but according to the Center for Immigration Studies, the crime rates of such persons does not matter as much as what we do with those undocumented immigrants who are committing crimes and cause problems.¹³

Challenges Posed by Migrants and Asylum Seekers

About 80 million people around the globe have recently been forced to flee war, drug cartels, violence, extortion, conflict, or persecution in their home country and have crossed an international border to find safety in another country.¹⁴ Frustrating U.S. government plans for immigration reform was a crisis at the southern border that came to pass early in 2021, created primarily by individuals coming from the Northern Triangle of Central America: Honduras, Guatemala, and El Salvador. By May 2021, nearly 900,000 migrants had been encountered by the federal U.S. Customs and Border Protection (CBP) at the U.S.–Mexican border. Meanwhile, the United States was busy expelling many—more than a half million—who tried to cross using a controversial piece of legislation: **Section 265 of U.S. Code Title 42**, which prohibits U.S. entry by anyone who may bring a communicable disease with them.¹⁵

Asylum seekers in this country do not have to present themselves at a port of entry; they only need to claim asylum to the first CBP officer or an airport or other official to apply for or request the opportunity to apply for asylum.¹⁶



A border patrol agent takes information from a family crossing the southern border into the United States.

©iStockphoto.com/vichinterlang

What Can Law Enforcement Do?

In the foreseeable future, there will likely remain much turmoil concerning immigration issues as they relate to law, policy, and enforcement at the federal level. Given that, state and local agencies should continue to cooperate with federal immigration officials to protect our national security. This network is of critical importance for dealing with crimes and threats involving “lone-wolf,” homegrown terrorists (simply put, where the perpetrator has the same citizenship as the victims) as well as gangs, sex trafficking, smuggling, illicit drug offenses, and other serious crimes that are often tied to unauthorized immigration. Furthermore, federal agencies rely on and benefit greatly from intelligence developed at the state and local levels; therefore, these agencies should never turn a blind eye to immigration violations. Agencies operating intelligence units (often referred to as fusion centers) must continue to do their work. Finally, as they will come into frequent contact with immigrants, local police should receive adequate training and possess a working knowledge of immigration law and policy.¹⁷

Case Study 16.1

In the Police Toolkit: Section 287(g)

U.S. Immigration and Customs Enforcement (ICE) has as one of its duties the enforcement of federal immigration laws. The **287(g) Program**, contained in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,¹⁸ is one of ICE’s top partnership initiatives. It allows a state or local law enforcement entity to enter into a partnership with ICE immigration enforcement and allows certain selected and specially trained police officers to identify and apprehend undocumented immigrants in their communities.¹⁹ These deputized officers are allowed to interview individuals to ascertain their immigration status, check DHS databases for information/enter information on individuals, issue detainers to hold individuals for ICE, file documents to begin the removal process, and make recommendations for detention and immigration bond.

Opponents of the program believed the program had many flaws, probably the most serious of which was that it allowed agencies to engage in racial profiling of Latinos—routinely conducting “sweeps” in Latino neighborhoods—and unlawfully detain and arrest Latinos.²⁰ Nevertheless, as of 2022, ICE had some form of 287(g) agreement (there are two models from which agencies can choose) with law enforcement agencies in 30 states²¹ and had trained and certified several thousand state and local officers working in the program.

Still, the future of 287(g) remains uncertain; in February 2021, more than 60 members of Congress signed a letter to the director of the Department of Homeland Security urging the termination of the program as well as all programs that use state and local law enforcement to conduct federal immigration enforcement.²²

Role of the Courts

The task of adjudicating immigration cases and interpreting and administering U.S. immigration laws for the federal government falls to the **Executive Office for Immigration Review (EOIR)**, created in 1983 under the U.S. Department of Justice. EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings.²³ More specifically, these 330 immigration judges in 58 courts throughout the nation hear cases involving removal, deportation, and asylum. At present, the EOIR has about 1.3 million pending cases and is able to “complete” about 44,000 cases per year.²⁴

MASS MURDER

The federal government has never defined what a **mass murder** is, nor is there a commonly accepted definition of the term. In the 1980s, the Federal Bureau of Investigation (FBI) defined mass murder as the killing of “four or more people in a single incident (not including the person committing the killing), typically in a single location.”²⁵ Later, in 2013, Congress defined mass killing as a single incident that leaves three or more people dead.²⁶ Academics and others use different definitions as well. Differences in how mass shootings are defined make it difficult to arrive at a consensus concerning the number of victims or the kinds of incidents that occur; however, a very rough estimate is that over the past decade, there have been about 40 deaths via this means per year,²⁷ using the FBI mass murder definition (and that which is used herein).

Extent and Methods

Of course, such murders can spike in number at any time; for instance, mass shootings jumped nearly 50% from 2019 to 2020 (611 events, 513 deaths in the latter year), due in large part to it being a pandemic year rife with crippling unemployment, violent protests, and idle youth.²⁸ Then, continuing its increasing pace, by the end of May 2021 the nation had already witnessed 247 mass shootings (283 deaths)—or nearly 50 shootings and 57 deaths per month.²⁹

Note that while there is always a focus on the role of guns in cases of mass murders (leading much of the literature to term them “mass shootings”), history teaches us other methods are employed as well. Common methods used throughout history include axes, hatchets, blunt objects, knives, hanging, drowning, explosives, poison gas, poison, fire, motor vehicles, aircraft, and even scythes and blowtorches. Obviously, if all guns could be magically made to disappear, we would still have mass murders.³⁰

What We Know

A study by the *Los Angeles Times* found four traits common to persons committing mass murders³¹:

1. The vast majority of them had experienced early childhood trauma and exposure to violence, which often led to mental illness.
2. Nearly all had reached a crisis point (i.e., anger or depression) in the weeks or months leading up to the incident.
3. Most had studied the actions of other people who committed mass murders to validate their motives.
4. They all had the means (some type of weapon, a plan) to carry out their actions.



A makeshift memorial outside Marjory Stoneman Douglas High School in Parkland, Florida, honors the 17 students and faculty who were killed by a former student.

Associated Press/Gerald Herbert

Psychologists have also developed a lengthy list of factors (usually in some combination) that can lead to violence: social awkwardness, narcissism, anger issues, lack of empathy, paranoia, domestic violence, major life stressor, and school/job difficulties, among others.³²

We also know that mass murders tend to come in clusters. Researchers at Arizona State University and Northeastern Illinois University found that as many as 20% to 30% of such attacks are set off by other attacks, and the effect lasts about 13 days. Furthermore, such attacks are more common in states where more people own guns. This “copycat phenomenon” has also been found with suicides and homicides.³³

Is Prevention Possible?

It is unlikely that mass shootings can ever be eliminated in our society. However, there are actions that can be taken for prevention or to lessen their frequency. First, the aforementioned *Times* study suggests depriving persons with the potential to commit mass murders of the means to carry out their plans: having visible security measures (metal detectors, police or security officers, better control of weapons through age restrictions, and being proactive about noticing the signs of crisis and providing intervention.³⁴

It must also be recognized that government alone cannot prevent mass shootings. For example, by not maintaining an adequate security program, businesses are taking what one security expert terms a “security by chance” versus a “security by design” approach to protecting their employees and customers.³⁵ There is a direct link between proper risk mitigation and adequate security and in making the proper investment in their entire security and risk management system; gun control, universal background checks, and bans on assault weapons alone do not go far enough to address gun violence.³⁶

Another approach is to enact “red flag” laws, now found in about a dozen states and allowing courts to temporarily seize firearms from anyone believed to be a danger to themselves or others. However, these laws do not work without a comprehensive system of gun regulation, particularly among younger people. As an example, 19-year-old Brandon Hole killed eight people at a FedEx facility in Indianapolis in April 2021. Indiana had a red flag law, but it did not go so far as to make it difficult for people to go out and obtain more guns. By contrast, Connecticut has a law against people under 21 buying firearms and prohibits the purchase of assault rifles—both types of provisions would have stopped Hole.³⁷

Case Study 16.2

How to Prevent a Mass Shooting

A 28-year-old Texas man was arrested in June 2021 after social media messages were intercepted that indicated he was plotting a mass shooting at a Walmart store. An ensuing search of the suspect’s home turned up firearms, ammunition, drugs, electronic evidence, and radical ideological materials, and he was charged with making a “terroristic threat to create public fear of serious bodily injury.” Investigators said they intercepted a message stating he was “preparing to proceed with a mass shooting” at places that included Walmart, and he was arrested the following day. Already on felony probation, he was not legally able to possess guns.³⁸

The Link With Mental Illness

Another strong contributing factor to mass killings is mental illness. According to the National Alliance for Mental Illness, one in 20 U.S. adults will experience serious mental illness, and 17% of young people aged 6 through 17 experience a mental health disorder.³⁹ Table 16.1 summarizes common mental illness experienced in the population. Certainly, anyone who would purposefully kill innocent people in a mass shooting is mentally ill. Adequate funding is essential to help the mentally ill, as well as simultaneously increasing the number of professionals in the mental health workforce, so there is not a shortage of help for those who suffer from mental illness.⁴⁰

TABLE 16.1 ■ Prevalence of Common Mental Illness
Anxiety Disorders – 19%
Depression – 8%
Post-Traumatic Stress Disorder – 4%
Dual Diagnosis – 4%
Bipolar Disorder – 3%
Borderline Personality Disorder – 1%
Schizophrenia – 1%
Obsessive Compulsive Disorder – 1%

Source: National Alliance for Mental Illness, “Mental Health by the Numbers,” <https://nami.org/mhstats>.

The use of social media can assist in finding and identifying persons with potential to commit mass murders who are mentally ill. It is known that nearly all persons committing mass murders displayed some kind of indication of their mental state in the days and weeks leading up to the event.⁴¹

Because many mass killings occur at local businesses and schools, it is suggested that business owners and school and public agency leaders educate their respective stakeholders about the potential early warning signs that a person may become a risk for committing a mass killing, such as a change in behavior prior to the killings. If a person becomes increasingly antisocial or easily angered, purchases weapons or large amounts of ammunition, or speaks of plans to kill others, even in a joking but consistent manner, the behavior needs to be reported immediately.⁴²

Regarding police training and education, the Police Executive Research Forum (PERF) in Washington, D.C., has conducted major conferences and published monographs for police concerning active shooters (an active shooter is defined as an individual actively engaged in killing or attempting to kill people in a populated area). See, for example, PERF’S *The Police Response to Active Shooter Incidents* (see link at Note 20); included are case studies, prevention, training, and discussions of other facets of the problem.⁴³ And as first responders to an active shooter situation, modern police training holds that officers should attempt to find and neutralize the threat *as quickly as possible*. Every gunshot

fired during an active shooter incident can mean a potential fatality, so addressing and limiting the assailant's movement and access to potential victims will reduce the number of lives lost and allow for quicker medical response to injured victims.⁴⁴

Hardening targets is also key; someone intent to commit a mass killing is much more likely to attack where they expect no resistance until police arrive. Locking exterior doors and allowing only a single access point is very effective as well as having visible cameras and security staff. When financially feasible, facilities with large glass doors and windows should consider installing glass that cannot be shot out by an attacker.⁴⁵

Furthermore, the FBI and the Centers for Disease Control (CDC) find that controlling who has access to guns has much more of an impact on reducing gun-related homicides than controlling what guns people have. Keeping guns out of the hands of people who have a history of mental illness and/or violence appears to be most closely associated with decreased rates of firearm homicide. Even laws that ban people convicted of violent misdemeanors from possessing firearms can significantly reduce gun-related deaths. State gun laws requiring universal background checks for all gun sales resulted in homicide rates 15% lower than states without such laws, and outlawing the possession of firearms by people who have been convicted of a violent crime carries an 18% reduction in homicide rates. Universal background checks, however, appear to have the biggest impact. In contrast, laws regulating the type of firearms people have access to—such as assault weapon bans and large-capacity ammunition magazine bans—have had no effect on the rate of firearm-related homicide; indeed, such weapons are used in only a very small proportion of homicides.⁴⁶

The Courts' Role: Assessing Liability

Historically mass-killing events were so infrequent the courts took a hands-off approach to assessing and managing such risks. Furthermore, the courts have historically viewed mass killings as so unforeseeable and unexpected that no rational juror could find **liability**.⁴⁷

But in 2012, there began to be a slight shift in the courts' view of mass killings as they became more frequent and a shooting occurred at a movie theater complex in Aurora, Colorado. The court noted the unforeseeability of such acts but that the Department of Homeland Security had issued warnings to theaters before the shooting and had presented enough evidence to raise a question as to whether movie operators knew or should have known of such risks; however, the theater owner was eventually exonerated.⁴⁸

Recently, given the increasing incidence of such acts, claims of liability have taken on greater importance for the courts. Each such event has an economic impact and a wide range of damage, loss, and expenses (medical, funeral, counseling, property damage, etc.) for victim persons and businesses, and lawsuits are now often filed.⁴⁹ Then, in 2020, in a case involving a mass shooting at an abortion clinic and where it was alleged the risk of an active shooter was known to the owner of the facility and better security measures at the clinic might have prevented the attack, a federal court held that a jury *could* conclude the defendant's conduct was a substantial factor in the loss.⁵⁰ (The case is currently on appeal to the Colorado Supreme Court.)

A related question is whether the gun industry is liable in such events. The **Protection of Lawful Commerce in Arms Act (PLCAA)** of 2005 held that gun manufacturers and sellers of firearms and ammunition were *not* liable for the harms or unlawful misuse of firearm products.⁵¹ This legislation effectively ended most threats of criminal litigation against the gun industry, even giving immunity to the manufacturer of the bump stocks used by the Las Vegas shooter in 2017 (58 people killed, more than 800 injured—the deadliest in recent U.S. history) to increase the weapons' firing rate (significantly, an ensuing civil suit against the owner of the hotel where the shooter was situated by 450 victims of the massacre resulted in an \$800 million settlement to compensate 4,400 relatives and victims of the shooting⁵²). However, after a 2017 church shooting in Sutherland Springs, Texas, survivors sued the sporting goods retailer that sold the gun used in the attack, claiming the gun and magazine were purchased illegally and negligently sold in violation of federal law. At present, experts disagree on whether the lawsuit has merit. Still, such lawsuits have led many gun retailers to cease selling the most dangerous weapons and high-capacity magazines associated with mass shootings.⁵³

THE CYBER THREAT

One does not need to look very far back in time to realize the havoc that is being wreaked by cybercriminals. After 2020 was determined to be the worst year ever for extortion-related cyberattacks (as many as 560 health care facilities, more than 1,500 schools, and 113 government agencies were impacted), the first half of 2021 saw a 102% increase in such attacks as cybercriminals hacked into a major gas pipeline (paid \$4.4 million in ransom), an insurance company (\$40 million paid), one of the world's leading meat processors (\$11 million paid), and dozens of government agencies (including a threat to make a Florida water supply highly toxic to drink).⁵⁴

Even police departments have been threatened, such as that against the Metropolitan Police Department in Washington, D.C., where hackers released personal information concerning two dozen officers and attempted to release sensitive data on police informants.⁵⁵ Nor have auto companies⁵⁶ and professional sports teams been strangers to such threats. The list of potential targets beyond those listed is obviously very long.

Indeed, victim companies paid about \$350 million in ransom in a recent year to regain control of their networks.⁵⁷ The average ransom demand is now between \$50 million and \$70 million, while the actual payment by those companies is between \$10 million and \$15 million.⁵⁸

Types and Methods

A **cyberattack** is any attempt to steal, harm, or gain unauthorized access to computer systems, security infrastructure, or computer networks. Such attacks fall into two categories: attacks that focus on disabling the operations of another system by shutting it down and attacks that aim to gain access to unauthorized data. According to the International Council of E-Commerce Consultants, also known as EC-Council, cyberattacks are one of the biggest global risks now facing corporations and individuals and now consist of four common types⁵⁹:

1. *Brute-force cyberattack*: Cybercriminals try every possible combination of passwords and passphrases until the account is unlocked; the attacker then has access to the data of a website or a personal account that allows them to shut down the victim's account or website. This approach is known to be infallible but very time-consuming to perpetrate.
2. *Credential stuffing*: The attacker uses stolen credentials to gain unauthorized access to a user's account. Huge databases containing compromised credentials are used to break into an account, and then the hacked account can be used to initiate fraudulent transactions.
3. *Phishing*: Emails are sent from what appears to be a trusted source to obtain personal information. The attacker uses both technical knowledge as well as social engineering skills—techniques that use psychological manipulation of human behavior to manipulate someone into divulging confidential or personal information—to succeed. The phishing emails usually come with an attached file or illegitimate website that tricks the victim into downloading malware or revealing personal information.
4. *Malware attacks*: Malicious software is downloaded into the victim's system without their knowledge for the purpose of stealing, encrypting, or deleting sensitive data from the system. Some of the major forms of malware attacks are adware (uninvited messages or popups or clickable advertisements that lead the victim to downloadable malicious software); ransomware (it blocks the access of authorized users to their private data, for which victims then need to pay the ransom amount demanded by the attacker); and trojans (malware with disguised intention that can create a backdoor for the attackers to stealthily get into the system).

What Can Be Done?

It is apparent that, firstly, businesses, organizations, and governmental agencies must move quickly to plug potential gaps in their systems, updating software and ensuring that their most critical functions are sufficiently insulated from cyberattacks.

In May 2021, President Biden issued an executive order requiring companies doing work for the government to improve their cybersecurity practices, while also launching an initiative to build an international coalition to hold countries accountable if they harbor ransom actors.

For businesses, the simplest preventive measure is to keep the most vital infrastructure functions off the internet while also keeping any online systems up to date with software patches, by backing up data, securing Wi-Fi networks, training employees on cyberattack prevention, and avoiding phishing attacks.⁶⁰

For their part, law enforcement agencies can attempt to impose risks and consequences on cyber-criminals. The FBI is the lead federal agency for investigating cyberattacks and intrusions. It collects and shares intelligence and engages with victims while working to arrest persons committing malicious cyber activities.⁶¹ The FBI also maintains a National Cyber Investigative Joint Task Force⁶² as well as an Internet Crime Complaint Center and works with other federal agencies (such as the National Defense Cyber Alliance), foreign governments, and the private sector to close gaps in intelligence and information security networks. In addition, in April 2021 the Department of Justice created the Ransomware and Digital Extortion Task Force to combat the growing number of ransomware and digital extortion attacks.⁶³



**WANTED
BY THE FBI**

**EVGENIY MIKHAILOVICH
BOGACHEV**

Conspiracy to Participate in Racketeering Activity; Bank Fraud; Conspiracy to Violate the Computer Fraud and Abuse Act; Conspiracy to Violate the Identity Theft and Assumption Deterrence Act; Aggravated Identity Theft; Conspiracy; Computer Fraud; Wire Fraud; Money Laundering; Conspiracy to Commit Bank Fraud



DESCRIPTION

Aliases: Yevgeniy Bogachev, Evgeniy Mikhaylovich Bogachev, "lucky12345", "slavik", "Pollingsoon"	
Date(s) of Birth Used: October 28, 1983	Hair: Brown (usually shaves his head)
Eyes: Brown	Height: Approximately 5'9"
Weight: Approximately 180 pounds	Sex: Male
Race: White	Occupation: Bogachev works in the Information Technology field.
NCIC: W890989955	

REWARD

The United States Department of State's Transnational Organized Crime Rewards Program is offering a reward of up to \$3 million for information leading to the arrest and/or conviction of Evgeniy Mikhailovich Bogachev.

REMARKS

Bogachev was last known to reside in Anapa, Russia. He is known to enjoy boating and may travel to locations along the Black Sea in his boat. He also owns property in Krasnodar, Russia.

CAUTION

Evgeniy Mikhailovich Bogachev, using the online monikers "lucky12345" and "slavik", is wanted for his alleged involvement in a wide-ranging racketeering enterprise and scheme that installed, without authorization, malicious software known as "Zeus" on victims' computers. The software was used to capture bank account numbers, passwords, personal identification numbers, and other information necessary to log into online banking accounts. While Bogachev knowingly acted in a role as an administrator, others involved in the scheme conspired to distribute spam and phishing emails, which contained links to compromised web sites. Victims who visited these web sites were infected with the malware, which Bogachev and others utilized to steal money from the victims' bank accounts. This online account takeover fraud has been investigated by the FBI since the summer of 2009.

Starting in September of 2011, the FBI began investigating a modified version of the Zeus Trojan, known as GameOver Zeus (GOZ). It is believed GOZ is responsible for more than one million computer infections, resulting in financial losses of more than \$100 million.

This man is just one of several persons the FBI is seeking in connection to the 2016 election hacking.

FBI via AP Associated Press/Uncredited

Finally, individuals can assist the effort by limiting the personal information they share online, changing privacy settings, keeping firewalls and operating systems up to date, using unique PINs and passwords (or fingerprint/facial scanner), watching for suspicious activity (e.g., something that sounds too good to be true or requests for one's personal information), using a secure internet connection and Wi-Fi network, and checking account statements and credit reports regularly.⁶⁴

Case Study 16.3

How to Bust a Russian National for Cyberattacks

A federal jury in Hartford, Connecticut, convicted a Russian national in June 2021 for operating a “crypting” service used to conceal malware from antivirus software, enabling hackers to systematically infect victim computers around the world. Oleg Koshkin, 41, formerly of Estonia, was convicted of one count of conspiracy to commit computer fraud and abuse and one count of aiding and abetting computer fraud and abuse. He faced a maximum penalty of 15 years in prison.

Koshkin operated a website that was intended to hide malware from antivirus programs, thus providing a critical service for other cybercriminals to infect thousands of computers around the world. He designed and operated a service that was an essential tool to help malicious software bypass antivirus software. Known as “crypt4u.com,” it promised to render malicious software fully undetectable by nearly every major provider of antivirus software. At the time it was dismantled, the botnet alone was known to include at least 50,000 compromised computers around the world.⁶⁵

Role of the Courts

The Computer Fraud and Abuse Act (CFAA) of 1986 was intended to strengthen laws regarding persons who intentionally access a computer system “without authorization or exceeds authorized access.” But there existed a split in the federal courts concerning how the law should be interpreted. A June 2021 U.S. Supreme Court decision helped to resolve the controversy. There, a Georgia police officer who needed money offered, for a fee of \$6,000, to help a known offender find information about an undercover officer on a statewide database. The man went to the FBI, which then set up a sting operation that resulted in the officer's arrest and conviction. On appeal to the Supreme Court, the officer argued he had not violated the CFAA nor acted in a manner that “exceeds authorized access.”

The Supreme Court agreed, 6–3, holding that the CFAA “exceeds authorized access” language is only violated when one accesses files or other information that is off-limits to them on a computer system they would otherwise have authorized access to. Here, the officer obtained information that was within the limits of what he could access with his authorization but was done for improper reasons. The Court added that if the “exceeds authorized access” clause criminalizes every violation of a computer-use policy, then “millions of otherwise law-abiding citizens are criminals.”⁶⁶

Case Study 16.4

Courts Dedicated to Trying Cybercrimes?

Many people believe that those persons the internet has helped the most are criminals and terrorists; furthermore, computer crime is too easy, rewarding, and carries little chance of one's being caught or punished. Given that cybercriminals could reap as much as \$120 trillion in revenue by 2030, some experts support the creation of special courts devoted to addressing cybercrime. Following California's model of Complex Civil Litigation court or Maryland's Business & Technology Case Management Program, it is believed that such courts could provide the resources necessary to handle such complex cases, surmount issues of jurisdiction, establish a body of related case law, develop judges who understand complex technologies, provide more logical and consistent sentencing, and thus provide a deterrent effect.⁶⁷ For some observers, the time for such courts has arrived.

IN A NUTSHELL

- A long-standing issue is what should be done with undocumented individuals, including those wishing to come here and those who are already here. A tandem issue concerns what to do with those seeking asylum. The criminal justice system—and the police in particular—are caught in the middle of this political, economic, and social debate. Related to the question of immigration are questions concerning whether undocumented immigrants commit more crimes.
- The executive branch of the federal government makes immigration enforcement decisions. An immigration bill now before Congress would forge a path to citizenship.
- A legal question has arisen concerning whether local police departments and sheriff's offices should be assisting with immigration enforcement—a task that, under current law, is a federal responsibility.
- Research concerning criminality by immigrants is frustrated by the fact that local police often do not list the immigration status of those persons arrested.
- The 287(g) Program allows a state or local law enforcement entity to enter into a partnership with ICE immigration enforcement.
- There is no commonly accepted definition of mass murder.
- Several common elements found among persons committing mass murders are early childhood trauma and exposure to violence; a crisis point prior to the incident; studying the actions of others who have committed mass murders; and having the means to carry out their actions.
- Mass shootings will likely never be eliminated in our society, but prevention can include depriving persons with potential to commit mass murders of the means to carry out their plans by having visible security measures and being proactive about noticing the signs of crisis and providing intervention.
- Major conferences and publications exist concerning active shooters; first responders are now trained to attempt to find and neutralize such a threat as quickly as possible.
- As a result of civil lawsuits, many gun retailers have ceased selling the most dangerous weapons and high-capacity magazines associated with mass shootings.
- A cyberattack is any attempt to steal, harm, or gain unauthorized access to computer systems, security infrastructure, or computer networks. Such attacks are those that focus on disabling the operations of another system by shutting it down and attacks that aim to gain access to unauthorized data.
- Four common types of cyberattacks are brute-force cyberattack, credential stuffing, phishing, and malware attacks.
- The FBI is the lead federal agency for investigating cyberattacks, using several task forces and centers to collect and share intelligence to arrest persons committing malicious cyber activities. The Department of Justice created the Ransomware and Digital Extortion Task Force to combat the growing number of ransomware and digital extortion attacks.
- Given its extent, some experts support the creation of special courts devoted to addressing cybercrime.

KEY TERMS

Asylum seekers (p. 387)	Mass murder (p. 390)
Cyberattack (types) (p. 394)	Protection of Lawful Commerce in Arms Act (PLCAA) (p. 393)
Executive Office for Immigration Review (EOIR) (p. 390)	Section 287(g) Program (p. 389)
Immigration (p. 387)	U.S. Citizenship Act of 2021 (p. 387)
Liability (p. 393)	U.S. Code Title 42, Section 265 (p. 388)

REVIEW QUESTIONS

1. Why is immigration to the United States so controversial, and why do people tend to either support or oppose it?
2. What do we know (or not know) concerning the criminality of unauthorized immigrants?
3. What efforts are being made to address immigration issues?
4. How does the FBI define mass murder?
5. What are some common traits of mass murderers, and what is the mental illness connection?
6. What efforts are being made by politicians, law enforcement, and courts to prevent and/or deal with mass murders?
7. What are the preferred targets and methods of cybercriminals?
8. What has been done in terms of enforcement and legislation to address the problem of cybercrime?

LEARN BY DOING

1. To better grasp the methods used by and challenges presented to federal, state, and local law enforcement agencies regarding the immigration issues discussed in this chapter, you could do no better than to interview individuals who work in this arena on a daily basis (e.g., a homeland security specialist or fusion center employee, a member of the Border Patrol, ICE, etc.).
2. Assume that your law enforcement agency is tasked with developing a multifaceted approach for intervening and preventing school-based gun violence in your county's school district. What resources would you use in drafting this report, focusing on educating teachers about intervening when students show signs they could be a danger to themselves or others, improving their schools' physical security, and reacting to an active shooter situation in a school?
3. Assume you are assigned a class project in which you are to investigate how cybercriminals fundamentally practice this type of crime. How will you approach this assignment?

APPENDIX: BILL OF RIGHTS: THE FIRST 10 AMENDMENTS TO THE UNITED STATES CONSTITUTION¹

According to the Library of Congress, “On September 25, 1789, the First Federal Congress of the United States proposed to the state legislatures twelve amendments to the Constitution. The first two, concerning the number of constituents for each Representative and the compensation of Congressmen, were not ratified. Articles three through twelve, known as the Bill of Rights, became the first ten amendments to the U.S. Constitution. The Bill of Rights contains guarantees of essential rights and liberties omitted in the crafting of the original Constitution.” The Bill of Rights was ratified on December 15, 1791. Because certain parts of those ten amendments contain essential rights and liberties and have major impact on the U.S. criminal justice system (and are in fact mentioned numerous times in this textbook), they are presented here.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ASSESS YOUR AWARENESS ANSWERS

Chapter 1: 1. True; 2. False; 3. False; 4. False; 5. True; 6. False
Chapter 2: 1. True; 2. False; 3. False; 4. True; 5. True; 6. False;
7. True; 8. True; 9. False
Chapter 3: 1. True; 2. False; 3. True; 4. False; 5. True; 6. False;
7. False
Chapter 4: 1. True; 2. False; 3. True; 4. False; 5. False; 6. False;
7. False
Chapter 5: 1. True; 2. False; 3. True; 4. False; 5. True; 6. False;
7. True; 8. True
Chapter 6: 1. False; 2. False; 3. False; 4. False; 5. True; 6. False
Chapter 7: 1. True; 2. False; 3. True; 4. False; 5. False; 6. False;
7. False; 8. True
Chapter 8: 1. True; 2. True; 3. True; 4. True; 5. False; 6. True;
7. True
Chapter 9: 1. True; 2. True; 3. True; 4. False; 5. False; 6. False

Chapter 10: 1. False; 2. True; 3. True; 4. False; 5. True; 6. True;
7. False
Chapter 11: 1. False; 2. True; 3. False; 4. True; 5. True; 6. False;
7. True
Chapter 12: 1. True; 2. False; 3. True; 4. False; 5. False; 6. False;
7. False
Chapter 13: 1. True; 2. True; 3. False; 4. False; 5. True; 6. False;
7. True
Chapter 14: 1. True; 2. False; 3. False; 4. True; 5. False; 6. True;
7. True
Chapter 15: 1. False; 2. False; 3. False; 4. True; 5. True; 6. True;
7. False; 8. False; 9. True
Chapter 16: 1. True; 2. False; 3. True; 4. False; 5. False; 6. True;
7. True; 8. False; 9. False

GLOSSARY

Absolute ethics: the type of ethics where there are only two sides—good or bad, black or white; some examples would be unethical behaviors such as bribery, extortion, excessive force, and perjury, which nearly everyone would agree are unacceptable for criminal justice personnel.

Academy training: where police and corrections personnel are trained in the basic functions, laws, and skills required for their positions.

Accepted lying: police activities intended to apprehend or entrap suspects. This type of lying is generally considered to be trickery.

Acquittal: a court or jury's judgment or verdict of not guilty of the offenses charged.

Actus reus: Latin for "guilty deed"; an act that accompanies one's intent to commit a crime, such as pulling out a knife and then stabbing someone.

Adjudication: the legal resolution of a dispute—for example, when one is declared guilty or not guilty—by a judge or jury.

Adoption studies: criminological research that looks at whether adopted children share criminal tendencies with their biological or adoptive parents.

Adversarial system: a legal system wherein there is a contest between two opposing sides, with a judge (and possibly a jury) sitting as an impartial arbiter, seeking truth.

Affidavit: any written document in which the signer swears under oath that the statements in the document are true.

Affirmative defense: the response to a criminal charge in which the defendant admits to committing the act charged but argues that for some mitigating reason they should not be held criminally responsible under the law.

Aggravating circumstances: elements of a crime that enhance its seriousness, such as the infliction of torture, killing of a police or corrections officer, and so on.

Alternatives to incarceration: a sentence imposed by a judge other than incarceration, such as probation, parole, shock probation, or house arrest.

Arraignment: a criminal court proceeding during which a formally charged defendant

is informed of the charges and asked to enter a plea of guilty or not guilty.

Arrest: the taking into custody or detaining of one who is suspected of committing a crime.

Arrest warrant: a document issued by a judge directing police to immediately arrest a person accused of a crime.

Asylum seekers: people fleeing war, drug cartels, violence, extortion, conflict, or persecution in their home country that have crossed an international border to find safety in another country.

Bail: surety (e.g., cash or paper bond) provided by a defendant to guarantee their return to court to answer to criminal charges.

Booking: the clerical procedure that occurs after an arrestee is taken to jail, during which a record is made of their name, address, charge(s), arresting officers, and time and place of arrest.

Boot camp: a short-term jail or prison program that puts offenders through a rigorous physical and mental regimen designed to instill discipline and respect for authority.

Burden of proof: the requirement that the state must meet to introduce evidence or establish facts.

Capital punishment: a sentence of death or carrying out same via execution of the offender.

Caseload: the number of cases awaiting disposition by a court, or the number of active cases or clients maintained by a probation or parole officer.

Causation: a link between one's act and the injurious act or crime, such as one tossing a match in a forest and igniting a deadly fire.

Chain of command: vertical and horizontal power relations within an organization, showing how one position relates to others.

Circuit courts: originally, courts wherein judges traveled a circuit to hear appeals; now, courts with several counties or districts in their jurisdiction; the federal court system contains 11 circuit courts

of appeals (plus the District of Columbia and territories), which hear appeals from district courts.

Civil law: a generic term for all noncriminal law, usually related to settling disputes between private citizens, governmental, and/or business entities.

Civil liability: in tort law, the basis for which a cause of action (e.g., fine) is made to recover damages; in criminal justice, where a police or corrections officer, for example, violates someone's civil rights.

Classical school (of criminology): a perspective indicating that people have free will to choose between criminal and lawful behavior and that crime can be controlled by sanctions and should be proportionate to the offense.

Classification (of incarcerated persons): an incarcerated person's security and treatment plan based on one's security, social, vocational, psychological, and educational needs while incarcerated.

Cold case: no standard time-related definition of a "cold case" exists regarding when an investigation goes "cold"; rather, it is generally the point when all viable leads in an investigation have been exhausted and detectives cease their investigative efforts, to be reopened if further information or evidence becomes available.

Community corrections: probation, parole, and a variety of other measures that offer convicted offenders an alternative(s) to incarceration.

Community era: beginning in about 1980, a time when the police retrained to work with the community to solve problems by looking at their underlying causes and developing tailored responses to them.

Community policing and problem-solving: a proactive management philosophy that involves police–community collaboration and a four-step process (scanning, analyzing, response, and assessment) to focus police activities and thus enable officers to respond more effectively to crime and disorder with arrests or other appropriate actions.

Conflict theory of justice: explains how powerful groups create laws to protect their values and interests in diverse societies.

Consensus theory of justice: explains how a society creates laws as a result of common interests and values, which develop largely because people experience similar socialization.

Constable: in England, favored noblemen who were forerunners of modern-day U.S. criminal justice functionaries; largely disappeared in the United States by the 1970s.

Constitutional policing: policing practices that emphasize the protection of civilians' civil rights and equal protection under the law.

Contract services: a for-profit firm or individuals hired by an individual or company to provide security services.

Control theory: a theory that describes criminal behavior as a natural outcome of people's desire to seek pleasure in the absence of effective social controls.

Conviction: the legal finding, by a jury or judge, or through a guilty plea, that a criminal defendant is guilty.

Coroner: an early English court officer; today, one (usually a physician) in the United States whose duty it is to determine cause of death.

Correctional officer (CO): one who works in a prison or jail and supervises correctional incarcerated persons.

County sheriff's office: a unit of county government with a sheriff (normally elected) and deputies whose duties vary but typically include policing unincorporated areas, maintaining county jails, providing security to courts in the county, and serving warrants and court papers.

Court of last resort: the last court that may hear a case at the state or federal level.

Courtroom work group: the criminal justice professionals who work together to move cases through the court system.

Crime control model: a model by Packer that emphasizes law and order and argues that every effort must be made to suppress crime and to try, convict, and incarcerate offenders.

Crime rate: the number of reported crimes divided by the population of the jurisdiction and multiplied by 100,000 persons; developed and used by the FBI *Uniform Crime Reports*.

Crime scene: any location where a crime occurred and that may contain forensic evidence relating to and supporting a criminal investigation.

Crimes against persons: violent crimes, to include homicide, sexual assault, robbery, and aggravated assault.

Crimes against property: crimes during which no violence is perpetrated against a person, such as burglary, theft, and arson.

Criminal justice flow and process: the movement of defendants and cases through the criminal justice process, beginning with the commission of a crime and including stages that involve actions of criminal justice actors working within police, courts, and correctional agencies.

Criminal law: the body of law that defines criminal offenses and prescribes punishments for their infractions.

Criminalistics: the interdisciplinary study of physical evidence related to crime; drawing on mathematics, physics, chemistry, biology, anthropology, and many other scientific fields.

Cyberattack: any attempt to steal, harm, or gain unauthorized access to computer systems, security infrastructure, or computer networks; four types of: brute-force cyberattack, credential stuffing, phishing, and malware attacks.

Day reporting center: a structured corrections program requiring offenders to check in at a community site on a regular basis for supervision, sanctions, and services.

Defendant: a person against whom a criminal charge is pending; one charged with a crime.

Defense: the response by a defendant to a criminal charge, to include denial of the criminal allegations in an attempt to negate or overcome the charges.

Defense attorney: one whose responsibility it is to see that the rights of the accused are upheld prior to, during, and after trial; the Sixth Amendment provides for "effective" counsel, among other constitutionally enumerated rights that defense attorneys must see are upheld.

Delay (trial): an attempt (usually by defense counsel) to have a criminal trial continued until a later date.

Deontological ethics: one's duty to act.

Detective/criminal investigator: a police officer who is assigned to investigate reported crimes, to include gathering evidence, completing case reports, testifying in court, and so on.

Determinate sentence: a specific, fixed-period sentence ordered by a court.

Deterrence: the effect of punishments and other actions to deter people from committing crimes.

Deviant lying: occasions when officers commit perjury to convict suspects or are deceptive about some activity that is illegal or unacceptable to the department or public in general.

Discovery: a procedure wherein both the prosecution and the defense exchange and share information as to witnesses to be used, results of tests, recorded statements by defendants, or psychiatric reports, so that there are no major surprises at trial.

Discretion: authority to make decisions in enforcing the law based on one's observations and judgment ("spirit of the law") rather than the letter of the law.

Disposition: an outcome of a criminal or juvenile court process signifying that the matter is completed.

District courts: trial courts at the county, state, or federal level with general and original jurisdiction.

Diversion program: a sentencing alternative that removes a case from the criminal justice system, typically to move a defendant into another treatment program or modality.

DNA: deoxyribonucleic acid, which is found in all cells; used in forensics to match evidence (hair, semen) left at a crime scene with a particular perpetrator.

Double jeopardy: the prosecution of an accused person twice for the same offense; prohibited by the Fifth Amendment except under certain circumstances.

Dual court system: the state and federal court systems of the United States.

Dual hazard prediction: the argument that people are most likely to engage in criminal behavior if they (1) have traits associated with crime and (2) are raised in environments conducive to criminal behavior.

Due process model: a model by Packer that advocates defendants' presumption of innocence, protection of suspects' rights, and limitations placed on police powers to avoid convicting innocent persons.

Duty of care: a legal obligation imposed on someone; in the case of the police, they have a legal responsibility to see that persons in their custody are free from harm, given necessary medical assistance when necessary, and treated humanely.

Eighth Amendment: in the Bill of Rights, it contains the protection against excessive bail and fines, as well as cruel and unusual punishment.

Electronic monitoring: use of electronic devices (bracelets or anklets) to emit signals when a convicted offender (usually on house arrest) leaves the environment in which he or she is to remain.

Entrapment: police tactics that unduly encourage or induce an individual to commit a crime they typically would not commit.

Ethics: a set of rules or values that spells out appropriate human conduct.

Exclusionary rule: the rule (see *Mapp v. Ohio*, 1961) providing that evidence obtained improperly cannot be used against the accused at trial.

Executive Office for Immigration Review (EOIR): governmental body tasked with adjudicating immigration cases and interpreting and administering U.S. immigration laws for the federal government.

Exigent circumstance: an instance in which quick, emergency action is required to save lives, protect against serious property damage, or prevent suspect escape or evidence destruction; in such cases, officers can enter a structure without a search warrant.

Exoneration: to absolve someone of criminal blame or find someone not guilty.

Failure to protect: a situation in which police place someone in jeopardy, such as by giving out the location of a battered spouse or names of victims or witnesses.

False arrest: unlawful physical restraint by a police officer for no valid reason.

Federal court system: the four-tiered federal system that includes the Supreme Court, circuit courts of appeal, district courts, and magistrate courts.

Federal law enforcement agencies: federal organizations that, for example, are charged with protecting the homeland (DHS), investigating crimes (FBI) and enforcing particular laws, such as those pertaining to drugs (DEA) or alcohol/tobacco/firearms/explosives (ATF), and guarding the courts and transporting prisoners (USMS).

Federalism: a type of government that divides powers between a national (federal) government and governments of smaller geographic territories, including states, counties, and cities., which divides government powers between the

federal government and other government entities, including state and local governments.

Felony: a serious offense with a possible sentence of more than a year in prison.

Felony-murder rule: the legal doctrine that says that, if a death occurs during the commission of a felony, the perpetrator of the crime may be charged with murder in the first degree, regardless of the absence of intent, premeditation and deliberation, or malice aforethought.

Feminist theory: a theory that explains how gender inequality affects female offending and justice system responses to crimes committed by females.

Field training officer (FTO): one who is to oversee and evaluate the new police officer's performance as they transition from the training academy to patrolling the streets.

Fifth Amendment: in the Bill of Rights, among other protections, it guards against self-incrimination and double jeopardy.

Forensic science: the study of causes of crimes, deaths, and crime scenes.

Fourth Amendment: in the Bill of Rights, it contains the protection against unreasonable searches and seizures and protects people's homes, property, and effects.

Grand jury: a body that hears evidence and determines probable cause regarding crimes and can return formal charges against suspects; use, size, and functions vary among the states.

Gratuities: the receipt of some benefit (a meal, gift, or some other favor) either for free or for a reduced price.

Halfway house: a community center or home staffed by professionals or volunteers designed to provide counseling to ex-prisoners as they transition from prison to the community.

Hands-off doctrine: the notion held by courts that prison administrators should be given free rein to run their prisons as they deem best.

Hands-on doctrine: the belief by courts that incarcerated persons have certain constitutional rights that the courts must see are upheld and that prison administrators must obey.

Hierarchy rule: in the FBI *Uniform Crime Reports* reporting scheme, the practice whereby only the most serious offense of several that are committed during a criminal act is reported by the police.

Higher education (for police): education beyond high school, at a college or university in particular.

House arrest/home confinement: detention of offenders in their own homes; compliance is often monitored electronically.

Houses of refuge: workhouses established in the early 1800s as a means of separating juvenile offenders from adult offenders.

Hurdle process: the process of testing and screening for the hiring process in law enforcement

Idealistic contrast: the differences between juvenile and adult criminal justice processes, to include treatment and terminology.

Illinois Juvenile Court Act (1899): legislation that established the first juvenile court in the United States.

Immigration: people moving from one country to another country to live and reside.

In loco parentis: a doctrine according to which the state will act in place of the parents if they fail in their duties to protect and provide for the child.

Incapacitation: rendering someone as unable to act or move about, either through incarceration or by court order.

Incarcerated older adults: incarcerated persons aged 55 and up.

Indeterminate sentence: a scheme whereby one is sentenced for a flexible time period (e.g., 5–10 years) so as to be released when rehabilitated or when the opportunity for rehabilitation is presented.

Informant: a person who covertly provides information about criminal activity to police, with some expectation of benefit in exchange—money, dropped or reduced charges, and so on; however, because such persons are often criminals themselves, their credibility and use are often questioned.

Initial appearance: a formal proceeding during which the accused is read their rights and informed of the charges and the amount of bail required to secure pretrial release.

Intensive supervision probation and parole: post-release supervision that usually includes much closer and stricter supervision, more contact with offenders, more frequent drug tests, and other such measures.

Intent, specific: a purposeful act or state of mind to commit a crime.

Intermediate court of appeals: a state court that stands between a trial court and a court of last resort; it typically has appellate jurisdiction only.

Intermediate sanctions: forms of punishment that are between freedom and prison, such as home confinement and day reporting.

INTERPOL: the only international crime-fighting organization; it collects intelligence information, issues alerts, and assists in capturing world criminals, and it has nearly 200 member countries.

Interrogation: in criminal law, the process whereby police question a person who is suspected of having knowledge of or having committed a crime; it typically involves informing the suspect of his or her rights under *Miranda*.

“Iron curtain” speech: in *Wolff v. McDonnell* (1973), the Supreme Court stated that there is no iron curtain between the Constitution and the prisons of the United States; in sum, incarcerated persons have rights.

Jail: a facility that holds persons who have been arrested for crimes and are awaiting trial, persons who have been convicted for misdemeanors and are serving a sentence (up to a year in jail), federal offenders, and others.

JDLR: in prison jargon, the sense that things “just don’t look right.”

Judicial misconduct: inappropriate behavior by a judge.

Judicial selection (methods of): means by which judges are selected for the bench, to include election, a nominating commission, or a hybrid of these methods.

Jurisdiction, court: the authority of a court to hear a particular type of case, based on geography (city, state, or federal) and subject matter (e.g., criminal, civil, probate).

Justice of the peace (JP): a minor justice official who oversees lesser criminal trials; one of the early English judicial functionaries.

Juvenile court: a court that has original jurisdiction to hear juvenile crime matters.

Kansas City Preventive Patrol Experiment: in the early 1970s, a study of the effects of different types of patrolling on crime—patrolling as usual in one area, saturated patrol in another, and very limited patrol in a third area; the results showed no significant differences.

Labeling theory: a theory contending that labeling a person as a deviant or criminal makes that person more likely to engage in future criminal behavior.

Learning theory: a theory asserting that criminal behaviors are learned from associating with others and from social interactions and social experiences.

Legal jurisdiction: the authority to make legal decisions and judgments, often based on geographic area (territory) or the type of case in question.

Legitimacy (of police): the extent to which the community believes that police actions are appropriate, proper, and just, and its willingness to recognize police authority.

Lex talionis: Latin for “an eye for an eye, a tooth for a tooth”; retaliation or revenge that dates back to the Bible and the Middle Ages.

Liability: assessed by courts to determine who may be held responsible for incidents such as mass murder.

Life without parole: a penalty or sentence imposed under which an inmate is to serve a life sentence without eligibility for parole.

Lineup: a procedure in which police ask suspects to submit to a viewing by witnesses to determine the guilty party, based on personal and physical characteristics; information obtained may be used later in court.

Locard’s exchange principle: the notion that offenders both leave something at the crime scene and take something from it; the crime scene analyst or investigator’s job is to locate that evidence and use it in the investigation.

Mass murder: the death of four or more people in a single incident perpetrated by another person or persons.

Mens rea: Latin for “guilty mind”; the purposeful intention to commit a criminal act.

Merit selection: a means of selecting judges whereby names of interested candidates are considered by a committee and recommendations are then made to the governor, who makes the appointment; known also as the Missouri Plan.

Misdemeanor: a lesser offense, typically punishable by a fine or up to 1 year in a local jail.

Mitigating circumstances: circumstances that would tend to lessen the severity of the sentence, such as one’s youthfulness,

mental instability, not having a prior criminal record, and so on.

Model Code of Judicial Conduct: adopted by the House of Delegates of the American Bar Association in 1990, it provides a set of ethical principles and guidelines for judges.

Motive: the reason for committing a crime.

Municipal police department: a police force that enforces laws and maintains peace within a specified city or municipality.

National Crime Victimization Survey: a random survey of U.S. households that measures crimes committed against victims; includes crimes not reported to police.

National Incident-Based Reporting System: a crime reporting system in which police describe each offense that occurs during a crime event as well as characteristics of the offender.

Negligence: failure to perform a duty owed.

Neoclassical criminology: an approach to crime that is grounded in the concept of rational choice but that views the accused as exempted from conviction if circumstances prevented the exercise of free will.

New generation/direct supervision jail: a jail that, by its architecture and design, eliminates many of the traditional features of a jail, allowing staff members greater interaction and control.

Noble cause corruption: a situation in which one commits an unethical act but for the greater good; for example, a police officer violates the Constitution in order to capture a serious offender.

Organization: an entity of two or more people who cooperate to achieve one or more objectives.

Organizational structure or chart: a diagram of the vertical and horizontal parts of an organization, showing its chain of command, lines of communication, division of labor, and so on.

Organized crime: crimes committed by members of illegal organizations.

Parens patriae: a doctrine according to which the state is the ultimate parent of the child (and will step in to provide and care for the child if parents neglect those duties).

Parole: early release from prison with conditions attached and under supervision of a parole agency.

Parole officer: one who supervises those who are on parole.

PINS (persons in need of supervision): usually juveniles thought to be on the verge of becoming delinquent.

Place Based Investigations of Violent Offender Territories (PIVOT): a policing strategy in which resources are focused at specific locations.

Plaintiff: the party bringing a lawsuit or initiating a legal action against someone else.

Plea negotiation (or bargaining): a preconviction process between the prosecutor and the accused in which a plea of guilty is given by the defendant, with certain specified considerations in return—for example, having several charges or counts tossed out and a plea by the prosecutor to the court for leniency or shorter sentence.

Police brutality: unnecessary use of force by police against citizens, resulting in injury.

Police corruption: misconduct by police officers that can involve but is not limited to illegal activities for economic gain, gratuities, favors, and so on.

Policing role: the function of the police in contemporary society.

Policing styles: James Q. Wilson argued that there are three styles of policing: watchman, legalistic, and service.

Policy-making: the act of creating laws or setting standards to govern the activities of government; the U.S. Supreme Court, for example, has engaged in policy-making in several areas, such as affirmative action, voting, and freedom of communication and expression.

Political era: from the 1840s to the 1930s, the period of time when police were tied closely to politics and politicians, dependent on them for being hired and promoted and for assignments—all of which raised the potential for corruption.

Positivist school: a school of thought that argues science can be used to discover the true causes of crime, which include factors outside of offenders' control.

Preliminary hearing: a stage in the criminal process conducted by a magistrate to determine whether a person charged with a crime should be held for trial based on probable cause; does not determine guilt or innocence.

Presumption of innocence: the premise that a defendant is assumed to be innocent until guilt is established beyond a reasonable doubt.

Pretrial motions/processes: any number of motions filed by prosecutors and defense

attorneys prior to trial—for instance, to quash evidence, change venue, conduct discovery, challenge a search or seizure, raise doubts about expert witnesses, or exclude a defendant's confession.

Prison: a state or federal facility that houses incarcerated persons, typically convicted of felonies, usually for a period greater than 1 year.

Prison industries: use of incarcerated persons in prison and jails to produce goods or provide services for a public agency or private corporation.

Prisonization: the process whereby an inmate becomes socialized into the culture and social life of prison society so that adjusting to the norms of outside society becomes difficult.

Private police/security officers: all nonpublic officers, including guards, watchmen, private detectives, and investigators; they have limited powers and only the same arrest powers as regular citizens.

Privatization: the operation of existing prison facilities, or the building and operation of new prisons, by for-profit companies.

Probable cause: a reasonable basis to believe that a crime has been, or is about to be, committed by a particular person.

Probation: an alternative to incarceration in which the convict remains out of jail or prison and in the community and thus on the job, with family, and so on, while subject to conditions and supervision of the probation authority.

Probation officer: one who supervises the activities of persons on probation.

Procedural justice: a philosophy meaning that the manner in which an individual regards the criminal justice system is tied closely to the perceived fairness of the *process* and how he or she was treated rather than to the perceived fairness of the *outcome*.

Procedural law: rules that set forth how substantive laws are to be enforced, such as those covering arrest, search, and seizure.

Proprietary services: in-house security services whose personnel are hired, trained, and supervised by the company or organization.

Prosecuting attorney: one who brings prosecutions, representing the people of the jurisdiction.

Prosecution: the bringing of charges against an individual, based on probable cause, so as to bring the matter before a court.

Protection of Lawful Commerce in Arms Act (PLCAA): a 2005 act that states gun manufacturers and sellers of firearms and ammunition are *not* liable for the harms or unlawful misuse of firearm products

Proximate cause: a factor that contributed heavily to an event, such as an auto crash or death.

Public defender: an attorney whose full-time job is to represent indigent defendants.

Public order crimes: offenses that violate a society's shared norms.

Punishment (and its purposes): penalties imposed for committing criminal acts, to accomplish retribution, deterrence, incapacitation, and/or rehabilitation.

Qualified immunity: protects all workers of the government from individual liability unless it can be proven that a clearly established constitutional right was violated.

Reasonable doubt: the standard used by jurors to arrive at a verdict—whether or not the government (prosecutor) has established guilt beyond a reasonable doubt.

Reasonable suspicion: suspicion that is less than probable cause but more than a mere hunch that a person may be involved in criminal activity.

Reentry and aftercare: providing services to, and supervision for, paroled incarcerated persons who are about to reintegrate into the community.

Reform era: also called the professional era, from the 1930s to 1980s, when police sought to extricate themselves from the shackles of politicians; led to the crime-fighter era—with greater emphases being placed on *numbers*—arrests, citations, response times, and so on.

Reformatory: a detention facility designed to reform individuals—historically juveniles.

Rehabilitation: attempts to reform an offender through vocational and educational programming, counseling, and so forth, so that he or she is not a recidivist and does not return to crime and prison.

Relative ethics: the gray area of ethics that is not so clear-cut, such as releasing a

serious offender in order to use him later as an informant.

Repeat offender program (ROP): a policing strategy in which officers receive specialized training and equipment to surveil chronic offenders who have a high likelihood of reoffending and then focus their resources on them, trying to catch them in a criminal act

Respondeat superior: Latin for “let the master answer”; a doctrine in liability that establishes a duty of supervisors to control their employees and be considered liable for their actions.

Restorative justice: the view that crime affects the entire community, which must be healed and made whole again through the offender’s remorse, community service, restitution to the victim, and other such activities.

Retribution: punishment that fits the crime, that is “equitable” for the offense.

Revocation: the court’s revoking probation or parole status for the purpose of returning an offender to prison (usually for not following the conditions of probation or parole or for committing a new offense).

Rights of incarcerated persons: the collective body of rights given to incarcerated persons by the courts in such areas as conditions of confinement, communications (mail and letters), access to law library and medical facilities, and so on.

Right-wrong test: the test of legal insanity, asking whether the defendant understood the nature and quality of their act and, if so, if they understood it was wrong.

Routine activity theory: a theory that explains the elements necessary for a crime to occur, as well as the types of controllers who can block criminal opportunities.

Sanction: a penalty or punishment.

School-to-prison pipeline: the notion that certain policies and practices push schoolchildren, particularly those who are most at risk, out of classrooms and into the juvenile and adult criminal justice and prison systems.

Search and seizure: in the Fourth Amendment, the term refers to an officer’s searching for and taking away evidence of a crime.

Search warrant: a document issued by a judge, based on probable cause, directing police to immediately search a person, a premises, an automobile, or a building for

the purpose of finding illegal contraband felt to be located therein and as stated in the warrant.

Section 1983: a portion of the U.S. Code that allows a legal action to be brought against a police officer or other person in position of authority who, it is believed, used his or her position (“acted under color of law”) to violate one’s civil rights.

Section 265 of U.S. Code Title 42: prohibits entry into the United States by anyone who may bring a communicable disease with them.

Section 287(g) Program: allows a state or local law enforcement entity to enter into a partnership with ICE immigration enforcement.

Sentencing guidelines: an instrument developed by the federal government that uses a grid system to chart seriousness of the offense, criminal history, and so forth and thus allows the court to arrive at a more consistent sentence for everyone.

Sheriff: the chief law enforcement officer of a county, typically elected and frequently operating the jail as well as law enforcement functions.

Shock probation/parole: a situation in which individuals are sentenced to jail or prison for a brief period to give them a taste or “shock” of incarceration and, it is hoped, turn them into more law-abiding citizens.

Situational crime prevention: a theory maintaining that crimes will occur if they are easy to commit, carry low risk, provide large rewards, provoke people, and are excusable, as judged by a wide range of potential offenders.

Sixth Amendment: in the Bill of Rights, it guarantees the right to a speedy and public trial by an impartial jury, the right to effective counsel at trial, and other protections.

“Slave of the state”: an early philosophy toward incarcerated persons, essentially stating incarcerated persons had no legal rights that had to be observed by prison administrators.

Slippery slope: the idea that a small first step can lead to more serious behaviors, such as the receipt of minor gratuities by police officers believed to eventually cause them to desire or demand receipt of items of greater value.

Social conflict theory: a theory that explains crime as an outcome of conflicting interests between groups in society and the dominant group’s attempts to control and exploit groups with less power.

Social disorganization theory: a theory maintaining that neighborhood characteristics, including poverty, racial heterogeneity, and resident transiency, break down social controls and lead to criminal behavior.

Solitary confinement: a form of imprisonment in which an inmate is isolated from any human contact (except for members of prison staff).

Special-purpose state agencies: specially trained units for particular investigative needs, such as those for violations of alcoholic beverage laws, fish and game laws, organized crime, and so on.

Speedy Trial Act of 1974: later amended, a law originally enacted to ensure compliance with the Sixth Amendment’s provision for a speedy trial by requiring that a federal case be brought to trial no more than 100 days following the arrest.

Standing: a legal doctrine requiring that one must not be a party to a lawsuit unless they have a personal stake in its outcome.

Stare decisis: Latin for “to stand by a decision”; a doctrine referring to court precedent, whereby lower courts must follow (and render the same) decisions of higher courts when the same legal issues and questions come before them, thereby not disturbing settled points of law.

State bureau of investigation: a state agency that is responsible for investigating crimes involving state statutes; they may also be called in to assist police agencies in serious criminal matters and often publish state crime reports.

State court system: civil or criminal courts in which cases are decided through an adversarial process; typically includes a court of last resort, an appellate court, trial courts, and lower courts.

State police: a state agency responsible for highway patrol and other duties as delineated in the state’s statutes; some states require their police to investigate crimes against persons and property.

State prison: a correctional facility that houses persons convicted of felonies/ crimes at the state level.

Status offense: a crime committed by a juvenile that would not be a crime if committed by an adult; examples would be purchasing alcohol and tobacco products, truancy, and violating curfew.

Strain theory: a theory that argues criminal behavior is caused by feelings of strain, which occur when people believe that

legitimate means of achieving success are not accessible to them.

Stress: discomfort and distress caused by situations that officers face on the job.

Substantive law: the body of law that spells out the elements of criminal acts.

Substantive violation: an allegation that one was arrested for a new criminal offense while serving probation.

Supermax prison: a penal institution that, for security purposes, affords incarcerated persons very few, if any, amenities and a great amount of isolation.

Tasks of policing (four basic): enforce the law, perform welfare tasks, prevent crime, and protect the innocent.

Technical violation: in probation and parole, when one violates certain conditions that must be obeyed to remain out of prison, such as violating curfew, using drugs or alcohol, or not maintaining a job.

Terry stop: also known as a “stop and frisk”; when a police officer briefly detains a person for questioning and then frisks (“pats down”) the person if the officer reasonably believes he or she is carrying a weapon.

Theoretical paradigm: a framework consisting of a group of theories that propose similar explanations for a particular type of behavior or event (e.g., crime).

Three-strikes law: a crime control strategy whereby someone who commits three or more violent offenses will be sentenced to a lengthy term in prison, usually 25 years to life.

Tort: a civil wrong or infraction; the remedy will be damages awarded in civil trial.

Transfer (remand): the movement or assigning of a juvenile offender to an adult court because the youth’s behavior is such that he or she is not amenable to the juvenile court’s rehabilitative philosophy.

Trial process: all of the steps in the adjudicatory process, from indictment or charge to conviction or acquittal.

U.S. Citizenship Act of 2021: legislation, if passed, would forge a path to citizenship for the undocumented immigrants who were currently living in the United States, expand family-based immigration, promote migrant worker visas, provide \$4 billion to Central American countries for economic and security purposes, expand the means for new arrivals to have protected legal status, and provide new technologies for additional border security.

U.S. Supreme Court: the court of last resort in the United States; also the highest appellate court; consists of nine justices who are appointed for life.

Uniform Crime Reports: published annually by the FBI, each report describes the nature of crime as reported by law enforcement agencies; includes analyzes of Part I crimes.

Use of force: the type and amount of effort required to compel compliance by an unwilling suspect.

Utilitarianism: in ethics, as articulated by John Stuart Mill, a belief that the proper course of action is that which maximizes utility; usually defined as that which

maximizes happiness and minimizes suffering.

Vicarious liability: a legal doctrine whereby a person is responsible for the actions of another and is to exercise reasonable and prudent care in supervising that person.

Victim impact statements: information provided prior to sentencing by the victims of a crime (or, in cases of murder, the surviving family members) about the impact the crime had on their lives; allowed by the U.S. Supreme Court.

Warden: the chief administrator of a federal penitentiary or state prison.

Wedding cake model of criminal justice: a model of the criminal justice process whereby a four-tiered hierarchy exists, with a few celebrated cases at the top, and lower tiers increasing in size as the seriousness of cases declines and informal processes (use of discretion) become more likely to occur.

Whistleblower Protection Act: a federal law prohibiting reprisal against employees who reveal information concerning a violation of law, rules, or regulations, gross mismanagement or waste of funds, an abuse of authority, and so on.

White-collar crime: crimes committed by wealthy or powerful individuals in the course of their professions or occupations.

XXY chromosome: the so-called criminal chromosome; criminal behavior is thought to be caused, in some people, by an extra Y chromosome, believed to cause agitation, aggression, and greater criminal tendencies.

ENDNOTES

CHAPTER 1

1. Spencer, H., & Pérez-Peña, R. (2017). Murder charge increases in Charlottesville protest death. *The New York Times*. <https://www.nytimes.com/2017/12/14/us/charlottesville-fields-white-supremists.html>
2. Lopez, G. (2020). Trump's criminal justice policy, explained. *Vox*. <https://www.vox.com/2020-presidential-election/21418911/donald-trump-crime-criminal-justice-policy-record>
3. Jarnett, L. (2017, February 10). Trump signs three new executive orders on crime reduction. *CNN*. <https://www.cnn.com/2017/02/09/politics/trump-executive-orders-crime-reduction/index.html>
4. Federal Bureau of Investigation, Table 2. (2019). Crime in the United States by community type, 2019. *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-2>
5. Buehler, E. D. (2021). Justice expenditures and employment extracts, 2017—preliminary. *Statistical tables*. U.S. Department of Justice, Office of Justice Systems, Bureau of Justice Statistics. <https://bjs.ojp.gov/library/publications/justice-expenditure-and-employment-extracts-2017-preliminary>
6. DiscoverQuotes. (n.d.). Justice quotes. *Quotes about justice and injustice*. <https://discoverquotes.com/justice/>
7. Gonnerman, J. (2014, September 29). Before the law. *The New Yorker*. <https://www.newyorker.com/magazine/2014/10/06/before-the-law>
8. Austin, J. (1994). Three strikes and you're out: The likely consequences on the courts, prisons, and crime in California and Washington state. *St. Louis University Public Law Review*, 14, 1239–1257.
9. See, for example, Joe, D. (2004). *Cruel justice: Three strikes and the politics of crime in America's golden state*. University of California Press.
10. Austin, Three strikes and you're out, pp. 239–257.
11. Ehlers, S., Schiraldi, V., & Zidenberg, J. (2004). *Still striking out: Ten years of California's three strikes*. Justice Policy Institute. <http://www.justicepolicy.org/research/2028>
12. Staples, B. (2012, November 24). California horror stories and the 3-strikes law. *The New York Times*. <http://www.nytimes.com/2012/11/25/opinion/sunday/california-horror-stories-and-the-3-strikes-law.html>
13. Hetey, R. C., & Eberhardt, J. L. (2014). Racial disparities in incarceration increase acceptance of punitive policies. *Justice Quarterly*, 25(10), 1949–1954.
14. Applegate, B. K., Cullen, F. T., Turner, M. G., & Sundt, J. L. (1996). Assessing public support for three-strikes-and-you're-out laws: Global versus specific attitudes. *Crime & Delinquency*, 42(4), 517–534.
15. ACLU. (2002, March 17). 10 reasons to oppose '3 strikes, you're out. <http://www.aclu.org/other/10-reasons-oppose-3-strikes-youre-out>
16. Ehlers, S., Schiraldi, V., & Zidenberg, J., *Still striking out*.
17. Ibid.
18. Kovandzic, T. V., Sloan III, J. J., & Vieraitis, L. M. (2004). Striking out as crime reduction policy: The impact of 'three strikes laws on crime rates in U.S. cities. *Justice Quarterly*, 21(2), 207–239.
19. Staples, California horror stories and the 3-strikes law.
20. Ibid.
21. Alexander, B. S., & Pollack, H. (1980). *Criminal justice: An overview* (p. 9). Holt, Rinehart and Winston.
22. Ibid., p. 10.
23. Ibid., p. 366.
24. Bernard, T. J. (1983). *The consensus-conflict debate: Form and content in social theories* (p. 78). Columbia University Press.
25. Hobbes, T. (1950). *Leviathan* (pp. 290–291). E. P. Dutton.
26. Laws that prohibit conducting certain types of business on Sundays, sometimes called "Blue Laws," are still in effect in some locations throughout the United States. For a historical overview of these laws, see Laband, D. N., & Heinbuch, D. H. (1987). *Blue laws: The history, economics, and politics of Sunday closing laws*.
27. Gallup. (2021, November 4). Support for legal marijuana holds at record high of 68%. *Gallup News*. <https://news.gallup.com/poll/356939/support-legal-marijuana-holds-record-high.aspx>
28. Ballotpedia. (n.d.). Marijuana laws in the United States. https://ballotpedia.org/Marijuana_laws_in_the_United_States#:~:text=As%20of%20June%202021%2C%2018,marijuana%20have%20remained%20federal%20offenses
29. Jean-Jacques, R. (1946). A discourse on the origin of inequality. In G. D. H. Cole (Ed.), *The social contract and discourses* (p. 240). E. P. Dutton.
30. Bernard, *Consensus-conflict debate*, pp. 83, 85.
31. *Roe v. Wade*, 410 U.S. 113 (1973).
32. *Planned Parenthood v. Casey*, 505 U.S. 833 (1973).
33. See Supreme Court of the United States. Opinions of the Court—2021. <https://www.supremecourt.gov/opinions/slipopinion/21>
34. See Gallup. (n.d.). Abortion. <http://www.gallup.com/poll/1576/abortion.aspx>
35. Conaboy, R. P., et al. (1995, February). *Special report to the congress: Cocaine and federal sentencing policy*. U.S. Sentencing Commission. <http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/199502-rtc-cocaine-sentencing-policy/EXECSUM.pdf>

36. Packer, H. L. (1968). *The limits of the criminal sanction*. Stanford University Press.
37. Packer, H. L. (1964). Two models of the criminal process. *University of Pennsylvania Law Review*, 113(1), 1–68.
38. The President's Commission on Law Enforcement and Administration of Justice. (1967). *The challenge of crime in a free society* (p. 5). U.S. Government Printing Office.
39. See Office of Juvenile Justice and Delinquency Prevention. (2012). Upper age of original Juvenile Court Jurisdiction. *Statistical Briefing Book: Juvenile Justice System Structure and Process*. U.S. Department of Justice. http://www.ojjdp.gov/ojstatbb/structure_process/qa04101.asp
40. Walker, S. (1997). *Sense and nonsense about crime and drugs* (4th ed, p. 15). Wadsworth.
41. Adapted from Broemmel, M. (n.d.). *The wedding cake model theory of criminal justice*. eHow. http://www.ehow.com/about_5143074_wedding-model-theory-criminal-justice.html
42. Kennedy, R. F. (1994). *The enemy within: The McClellan committee's crusade against Jimmy Hoffa and corrupt labor unions* (p. 324). Perseus Books.
43. Bloom, B. S (Ed.), Englehart, M. D., Furst, E. J., Hill, W. H., & Krathwohl, D. R. (1956). *Taxonomy of educational objectives: The classification of educational goals. Handbook I: Cognitive domain*. Longman.
44. Law Library of Congress. (n.d.). Case law (or common law). *American Memory*. http://memory.loc.gov/ammem/awhhtml/awlaw3/common_law.html
45. Hessick, C. B. (2006). Motive's role in criminal punishment. *Southern California Law Review*, 80(1), 89.
46. See Nevada Revised Statutes. <https://www.leg.state.nv.us/NRS>
47. See Arizona Criminal Code. <https://www.azleg.gov/arstitle>
48. Ibid.
49. *People v. Anderson*, 70 Ca1.2d 15 (1968).
50. *U.S. v. Brown*, 518 F.2d 821 (1975).
51. Collier, J. (2021). Tennessee's death by distribution law can mean a second-degree murder conviction. *Drug Crimes*. <https://www.knoxvillemurinaldefense.com/knox-county-dui-lawyer/tennessee-death-by-distribution-law-can-mean-a-second-degree-murder-conviction>
52. See, for example, Elkins, J. R. (2006). Depraved heart murder. *West Virginia Homicide Jury Instructions Project*. West Virginia University College of Law, Spring. http://lawlit.net/adcrimlaw/depraved_heart_murder.html
53. Federal Bureau of Investigation. Rape. In *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/rape>
54. Federal Bureau of Investigation. Robbery. In *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/robbery>
55. Federal Bureau of Investigation. Aggravated assault. In *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/aggravated-assault>
56. Federal Bureau of Investigation. Burglary. In *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/burglary>
57. For Nevada's larceny-theft statute, see *Nevada Revised Statutes*, Chapter 205.220; for Iowa's larceny statutes, see *Iowa Code*, Chapter 714.2, "Degrees of Theft." <https://law.justia.com/codes/iowa/2014/title-xvi/subtitle-1/chapter-714/section-714.2>
58. Federal Bureau of Investigation. Larceny-theft. In *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/larceny-theft>
59. Federal Bureau of Investigation. Motor vehicle theft. In *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/motor-vehicle-theft>
60. Federal Bureau of Investigation. Arson. In *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/arson>
61. United Nations Office on Drugs and Crime. (2020). *Global report on trafficking in persons*. <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>
62. Sutherland, H. (1940, February). White collar criminality. *American Sociological Review*, 5, 1–12.
63. Hagan, E. F. (2013). *Introduction to criminology: Theories, methods, and criminal behavior* (8th ed., p. 281). SAGE.
64. Ibid., p. 288.
65. Ibid., p. 320.
66. Lenzner, R. (2008, December 12). Bernie Madoff's \$50 billion Ponzi scheme. *Forbes*. http://www.forbes.com/2008/12/12/madoff-ponzi-hedge-pf-ii-in_rl_1212croesus_inl.html
67. Hayes, C. L., & Eaton, L. (2004, March 6). The Martha Stewart verdict: The overview; Stewart found guilty of lying in sale of stock. *The New York Times*. <https://www.nytimes.com/2004/03/06/business/martha-stewart-verdict-overview-stewart-found-guilty-lying-sale-stock.html>
68. Rodziewicz, T. L., Houseman, B., & Hipkind, J. E. (2022, January 4). *Medical error reduction and prevention*. National Library of Medicine. <https://www.ncbi.nlm.nih.gov/books/NBK499956/>

CHAPTER 2

1. United States Drug Enforcement Administration. (n.d.). Facts about fentanyl. *Resources*. <https://www.dea.gov/resources/facts-about-fentanyl>
2. Nguyen, C., Horn, M., Bozovic, A., Bott, M., & Villarreal, M. (2022). Fighting fentanyl: Santa Cruz family says law enforcement failed in daughter's death. *NBC Bay Area*. <https://www.nbcbayarea.com/investigations/fighting-fentanyl-santa-cruz-family-says-law-enforcement-failed-in-daughters-death/2863139/>
3. Block, P. B., & Hostettler, J. (2002). *Famous cases: Nine trials that changed the law* (pp. 9–12). Waterside Press.
4. Black, H. C. (1951). *Black's law dictionary* (4th ed.). West.

30. Fleddermann, C. B. (2004). The Ford Pinto exploding gas tank. In *Engineering ethics* (2nd ed., pp. 72–73). Prentice Hall.
31. Harrell, E. (2021, April). *Victims of identity theft, 2018*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/vit18.pdf>
32. Edelhertz, H. (1970). *The nature, impact and prosecution of white-collar crime*. Report No. ICR 70–1. U.S. Department of Justice.
33. Federal Bureau of Investigation. (n.d.). *What we investigate*. Transnational Organized Crime. <https://www.fbi.gov/investigate/organized-crime>
34. See Statistics. <http://www.twainquotes.com/Statistics.html>
35. Federal Bureau of Investigation. (2019). Incidents and offenses. *Hate Crime Statistics—2019*. U.S. Department of Justice. <https://ucr.fbi.gov/hate-crime/2019/topic-pages/incidents-and-offenses>
36. Kena, G., & Thompson, A. (2021, September). *Hate crime victimization, 2005–2019*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. <https://bjs.ojp.gov/library/publications/hate-crime-victimization-2005-2019>
37. For access to the publications, see Federal Bureau of Investigation. *Uniform Crime Reports*. <https://www.fbi.gov/services/cjis/ucr/publications>
38. Federal Bureau of Investigation. Table 1. *Crime in the United States—by volume and rate per 100,000 inhabitants, 2000–2019*. U.S. Department of Justice. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-1>
39. Ibid.
40. Federal Bureau of Investigation. Murder. *Crime in the United States—2019*. Uniform Crime Reporting Program. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/murder>
41. Federal Bureau of Investigation. Offense definitions. *Crime in the United States—2019*. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/offense-definitions>
42. Federal Bureau of Investigation. FBI releases 2019 crime statistics. *Press releases*. U.S. Department of Justice. <https://www.fbi.gov/news/press-releases/press-releases/fbi-releases-2019-crime-statistics>
43. See, for example, James, N., & Ris-
hard, L. (2008, January 3). How crime in the United States is measured. *Congressional Research Service Report for Congress* (pp. 17–20). <https://crsreports.congress.gov/product/pdf/RL/RL34309/3>
44. See Federal Bureau of Investigation. (2004). *Uniform crime reporting handbook* (p. 10). U.S. Department of Justice. https://ucr.fbi.gov/additional-ucr-publications/ucr_handbook.pdf
45. Federal Bureau of Investigation. (2016). FBI releases 2015 crime statistics from the national incident-based reporting system, encourages transition. *Press releases*. U.S. Department of Justice. <https://www.fbi.gov/news/press-rel/press-releases/fbi-releases-2015-crime-statistics-from-the-national-incident-based-reporting-system-encourages-transition>
46. Congressional Research Service. (2021, February 1). The national incident-based reporting system (NIBRS): Benefits and uses. https://www.everycrsreport.com/files/2021-02-01_R46668_e8492643a8e153b439dc8552ab868a8390eca337.pdf
47. Bureau of Justice Statistics. (2020). Data collection: National crime victimization survey (NCVS). <http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=245>
48. Ibid.
49. National Archive of Criminal Justice Data. (2020). National crime victimization survey. *Resource Guide*. <https://www.icpsr.umich.edu/web/pages/NACJD/NCVS/crimecounts.html>
50. See *State v. Thompson*, 865 p.2d 1125 (Mont. 1993) and Mont. Code. Ann. §§45–501–1–3. The principal was acquitted of sexual assault because the statute did not contemplate purely psychological force. The Montana legislature later amended the statute to clarify this issue in anticipation of future cases.
51. Defendant Peterson was charged with manslaughter. At trial, the judge instructed the jury that self-defense is *not* available as a defense when someone acts as the aggressor, stands one’s ground when other options are available, and actually provokes a conflict. Peterson was convicted; he appealed on the grounds that his shooting the driver should be excused because he acted in self-defense. The appellate court agreed with the trial judge: One cannot claim to have acted in “self-defense” by a *self-generated necessity to kill* another person. The evidence demonstrated that Peterson instigated the confrontation, and his failure to retreat was also a factor that the jury could take into account. *U.S. v. Peterson*, 483 F. 2d 1222 (D.C. Cir. 1973).

CHAPTER 3

1. Maxouris, C. (2022, January 21). A timeline of 22-year-old Gabby Petito’s case. *CNN*. <https://www.cnn.com/2021/09/16/us/gabby-petito-timeline-missing-case/index.html>
2. Li, D. K., & Pei-Sze, C. (2021, October 12). Gabby Petito’s cause of death was strangulation, coroner determines. *NBC News*. <https://www.nbcnews.com/news/us-news/gabby-petito-s-cause-death-was-strangulation-coroner-determines-n1281319>
3. The National Coalition Against Domestic Violence. (n.d.). Statistics. <https://ncadv.org/STATISTICS>
4. Hoyer, M., & Heath, B. (2012, December 19). Mass killings occur in USA once every two weeks. *USA Today*. <http://www.usatoday.com/story/news/nation/2012/12/18/mass-killings-com-mon/1778303/>
5. Beccaria, C. (1963). *On crimes and punishments* (trans. H. Paolucci Bobbs-Merrill). (Original work published 1764)
6. Hagan, F. H. (2013). *Introduction to criminology: Theories, methods, and criminal behavior* (8th ed., p. 115). SAGE.
7. Adapted from Cole, G. F., & Smith, C. E. (2011). *Criminal justice in America* (6th ed., p. 56). Wadsworth.
8. Hagan, *Introduction to criminology*, p. 129.
9. Ibid.
10. Ibid.
11. Gibson, M. (2002). *Born to crime: Cesare Lombroso and the origins of biological criminology*. Praeger; Horn, D. G. (2003). *The criminal body*:

- Lombroso and the anatomy of deviance.* Routledge.
12. Ibid.
 13. Sheldon, W. H. (1949). *Varieties of delinquent youth: An introduction to constitutional psychiatry*. Harper; Sheldon, W. H. (1940). *The varieties of human physique: An introduction to constitutional psychology*. Harper.
 14. See Glueck, S., & Glueck, E. (1950). *Unraveling juvenile delinquency*. Commonwealth Fund.
 15. Fox, R. G. (1971, March). The XYY offender: A modern myth? *Journal of Criminal Law, Criminology, and Police Science*, 62, 59–73.
 16. Peskin, M., Gao, Y., Glenn, A. L., Rudo-Hutt, A., Yang, Y., & Raine, A. (2013). Biology and crime. In F. T. Cullen & P. Wilcox (Eds.), *The Oxford handbook of criminological theory* (pp. 22–39). Oxford University Press.
 17. Glatt, J. (1999). *Evil twins: Chilling true stories of twins, killing and insanity*. St. Martin's.
 18. Raine, A. (1993). *The psychopathology of crime*. Academic Press.
 19. Cullen, F. T., Agnew, R., & Wilcox, P. (2014). *Criminological theory: Past to present*. Oxford University Press.
 20. Farrington, D. P. (Ed.). (2011). *Integrated developmental and life-course theories of offending* (Vol. 1). Transaction.
 21. Fletcher, J., & Wolfe, B. (2009, September). Long-term consequences of childhood ADHD on criminal activities. *Journal of Mental Health Policy Economics*, 12(3), 119–138.
 22. Policy implications that flow from studies showing that criminals are biologically inferior include *selective incapacitation*—either imprisoning or executing people who have been adopted and whose natural fathers had a criminal record—which is, of course, repugnant to our sense of justice and values unless one has in fact committed a heinous crime. Some people may argue instead that neurological defects may be identified through diagnostic imaging and that medications can suppress violent tendencies. There may be help in the future in this regard, however, as scientists come closer to being able to identify and remove or alter defective genes through genetic engineering. Furthermore, one could argue that persons with learning disabilities may be helped by receiving special education and counseling.
 23. Shaw, C. R., & McKay, H. D. (1942). *Juvenile delinquency and urban areas*. University of Chicago Press.
 24. Ibid.
 25. Sampson, R. J., Raudenbush, S. W., & Earls, F. (1997, August 15). Neighborhoods and violent crime: A multilevel study of collective efficacy. *Science*, 277(5328), 918–924.
 26. Merton, R. K. (1938, October). Social structure and anomie. *American Sociological Review*, 3(5), 672–682.
 27. Ibid.
 28. Agnew, R. (2005). *Pressured into crime: An overview of general strain theory*. Oxford University Press.
 29. Agnew, R. (2006). General strain theory: Current status and directions for further research. In F. T. Cullen, J. P. Wright, & K. R. Blevins (Eds.), *Taking stock: The status of criminological theory—Advances in criminological theory* (Vol. 15, pp. 101–123). Transaction.
 30. Sutherland, E. D., Cressey, D., & Luckenbill, D. (1992). *Principles of criminology*. Rowman & Littlefield.
 31. Akers, R. L., & Jensen, G. F. (2006). The empirical status of social learning theory of crime and deviance: The past, present, and future. In F. T. Cullen, J. P. Wright, & K. R. Blevins (Eds.), *Taking stock: The status of criminological theory: Advances in criminological theory* (Vol. 15, pp. 37–76). Transaction.
 32. Hirschi, T. (1969). *Causes of delinquency*. University of California Press.
 33. Gottfredson, M. R., & Hirschi, T. (1990). *A general theory of crime*. Stanford University Press.
 34. Lanier, M. M., Henry, S., & Anastasia, D. J. M. (2014). *Essential criminology*. Westview Press.
 35. Bald Eagle Protection Act of 1940, as amended, Public Law 95–616 (92 Stat. 3114), November 8, 1978.
 36. Lemert, E. (1951). *Social pathology: A systematic approach to the theory of sociopathic behaviour*. McGraw-Hill.
 37. Becker, H. S. (1963). *Outsiders: Studies in the sociology of deviance* (p. 9). Free Press.
 38. Bernburg, J. G., Krohn, M. D., & Rivera, C. J. (2006, February). Official labeling, criminal embeddedness, and subsequent delinquency: A longitudinal test of labeling theory. *Journal of Research in Crime and Delinquency*, 43(1), 67–88.
 39. Farrington, D. P., & Murray, J. (Eds.). (2013). *Labeling theory: Empirical tests* (Vol. 1). Transaction.
 40. Marenin, O. (1982). Parking tickets and class repression: The concept of policing in critical theories of criminal justice. *Contemporary Crises*, 6, 241–266.
 41. Vold, G. (1958). *Theoretical criminology*. Oxford University Press.
 42. Sellin, T. (1938). *Culture and conflict in crime*. Social Science Research Council; Austin, T. (1969). *Criminality and legal order*. Rand McNally; also see Vold, *Theoretical Criminology*.
 43. Currie, E. (1997, May). Market, crime and community: Toward a mid-range theory of post-industrial violence. *Theoretical Criminology*, 1(2), 147–172.
 44. See, for example, Kleiman, M. (2013, Spring). Smart on crime. *Democracy: A journal of ideas*, 28. <http://www.democracymagazine.org/28/smart-on-crime.php?page=all>
 45. Adler, F. (1975). *Sisters in crime: The rise of the new female criminal* (p. 12). McGraw-Hill.
 46. Equal Employment Opportunity Act, Public Law 92–261.
 47. Pregnancy Discrimination Act of 1978, 42 U.S.C. Sec. 2000e (k).
 48. Family and Medical Leave Act (FMLA), Public Law 103–3, 5 U.S.C. 6381–6387, 5 CFR part 630.
 49. Witt, R., & Witte, A. D. (1998, November). Crime, imprisonment, and female labor force participation: A time-series approach. *Social Science Research Network*. https://www.researchgate.net/publication/5194761_Crime_Imprisonment_and_Female_Labor_Force_Participation_A_Time-Series_Approach
 50. Simon, R. (1975). *Women and crime*. Lexington Books.
 51. Chesney-Lind, M., & Pasko, L. (2013). *The female offender* (3rd ed.). SAGE.
 52. Brown, B. (1986). Women and crime: The dark figures of criminology. *Economy and Society*, 15(3), 355.
 53. Cohen, L. E., & Felson, M. (1979, August). Social change and crime

- rate trends: A routine activity approach. *American Sociological Review*, 44, 588–608.
54. Clarke, R. V., & Eck, J. E. (2005). *Crime analysis for problem solvers in 60 small steps*. Center for Problem-Oriented Policing.
 55. Pratt, T. C., Holtfreter, K., & Reisig, M. D. (2010, August). Routine online activity and internet fraud targeting: Extending the generality of routine activity theory. *Journal of Research in Crime and Delinquency*, 47(3), 267–296.
 56. Clarke, R. V. (1997). *Situational crime prevention: Successful case studies* (2nd ed). Criminal Justice Press.
 57. Wright, R. T., & Decker, S. H. (2009). Creating the illusion of impending death. In P. Cromwell (Ed.), *In their own words: Criminals on crime* (5th ed., pp. 159–164). Oxford University Press.
 58. Ibid., pp. 161–162.
 59. Ibid., p. 162.
 60. Ibid., p. 164.
 61. Wright, R. T., & Decker, S. H., Deciding to commit a burglary in *ibid.*, pp. 90–101.
 62. Ibid., p. 100.
 63. Topalli, V., & Wright, R. T., Dubs and dees, beats and rims, in *ibid.*, pp. 129–141.
 64. See the Anti Car Theft Act of 1992, Public Law 102–519; the full text of the Act may be viewed at <https://www.justice.gov/jmd/ls/anti-car-theft-act-1992-pl-102-519>
 65. Topalli & Wright, Dubs and dees, beats and rims, p. 129.
 66. Ibid., pp. 131, 140.
 67. Kling, J. R., Ludwig, J., & Katz, L. F. (2005, February). Neighborhood effects on crime for female and male youth: Evidence from a randomized housing voucher experiment. *Quarterly Journal of Economics*, 120(1), 87–130.
 - Substances Act. <https://www.dea.gov/drug-information/csa>; also see Public Law 91–513. Title I deals with the establishment of rehabilitation programs for drug abusers; Title II addresses the registration and distribution of controlled substances; and Title III discusses issues related to the importation and exportation of controlled substances.
 3. U.S. Drug Enforcement Administration. (n.d.). Drug questionnaire. <https://www.dea.gov/sites/default/files/Careers/DrugQuestionnaire20.pdf>.
 4. See, for example, the Reno, Nevada, Police Department, Police recruitment: Minimum standards for appointment. <https://www.renopolice.com/recruit>.
 5. Cohen, J. S. (2018, January 25). Chicago cop under investigation again over social media posts. *ProPublica Illinois*. <https://www.propublica.org/article/chicago-police-officer-john-catanzara-investigation>.
 6. This scenario is based loosely on Gelman, D., Miller, S., & Cohn, B. (1992, November 23). The strange case of Judge Wachtler. *Newsweek*, 34–35. Wachtler was later arraigned on charges of attempting to extort money from the woman and threatening her 14-year-old daughter (it was later determined that the judge had been having an affair with the woman, who had recently ended the relationship). After being placed under house arrest with an electronic monitoring bracelet, the judge resigned from the court, which he had served with distinction for 2 decades.
 7. Thompson, H. A. (2021, September). Behind the wall. *Time*, 53–59.
 8. Kant, I. (2006). Foundations of the metaphysics of morals. *The German Library* 13. Continuum.
 9. Kania, R. (1988). Police acceptance of gratuities. *Criminal Justice Ethics*, 7, 37–49.
 10. Kleinig, J. (1996). *The ethics of policing*. Cambridge University Press.
 11. O'Malley, T. J. (1997, April). Managing for ethics: A mandate for administrators. *FBI Law Enforcement Bulletin*, 20–25.
 12. Martinelli, T. J. (2006, October). Unconstitutional policing: The ethical challenges in dealing with noble cause corruption. *The Police Chief*, 150.
 13. Crank, J. P., & Caldero, M. A. (2000). *Police ethics: The corruption of noble cause* (p. 75). Anderson.
 14. U.S. Department of Justice, National Institute of Justice, Office of Community Oriented Policing Services. (1997). *Police integrity: Public service with honor* (p. 62). U.S. Government Printing Office.
 15. Ibid.
 16. Sherman, L. (Ed.). (1974). *Police corruption: A sociological perspective* (p. 1). Anchor.
 17. Goldstein, H. (1977). *Policing a free society* (p. 188). Ballinger.
 18. Ibid.
 19. Asmann, P. (2018). Suspension of entire local police force shows depth of Mexico corruption. *Insight Crime*. <https://www.insightcrime.org/news/brief/suspension-entire-local-police-force-shows-depth-mexico-corruption/>.
 20. International Association of Chiefs of Police. (n.d.). Law enforcement oath of honor. https://www.theiacp.org/sites/default/files/all/i-j/IACP_Oath_of_Honor_En_8.5x11_Web.pdf
 21. Ibid.
 22. Carter, D. (1994). Theoretical dimensions in the abuse of authority. In T. Barker & D. Carter (Eds.), *Police deviance* (pp. 269–290). Anderson; also see Barker, T., & Carter, D. (1990). Fluffing up the evidence and 'covering your ass': Some conceptual notes on police lying. *Deviant Behavior*, 11, 61–73.
 23. Marx, G. T. (1982). Who really gets stung? Some issues raised by the new police undercover work. *Crime & Delinquency*, 165–193.
 24. *Illinois v. Perkins*, 110 S. Ct. 2394 (1990).
 25. Barker and Carter, *Police deviance*.
 26. Barker, T. An empirical study of police deviance other than corruption, in Barker and Carter, *Police deviance*, pp. 123–138.
 27. For an excellent analysis of police gratuities, see Dwenger, W. L., *Police perspectives on the acceptance of gratuities: A qualitative case study* [Doctoral dissertation published by ProQuest, July 2020]. <https://www.proquest.com/openview/6ad4395ba83dc1afdf354738ac2f308f/1?pq-origsite=gscholar&cbl=44156>.

CHAPTER 4

1. National Council of State Legislatures. (2022, April 19). State medical cannabis laws. <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
2. U.S. Drug Enforcement Administration. (n.d.). The Controlled

28. Quoted in Burnham, D. (1970, October 29). Police aides told to rid commands of all dishonesty. *The New York Times*, p. 1.
29. From the Washoe County Sheriff's Office, Reno, Nevada.
30. Tully, E. (n.d.). Misconduct, corruption, abuse of power: What can the chief do? <http://www.neiassociates.org/mis2.htm> (Part I) and <http://www.neiassociates.org/misconductII.htm> (Part II).
31. Ng, C. (2013, October 13). Florida cop buys \$100 in groceries for woman caught shoplifting food. *ABC News*. <https://abcnews.go.com/blogs/headlines/2013/10/florida-cop-buys-100-in-groceries-for-woman-caught-shoplifting-food>.
32. See WTLV. (2015). Officer caught on camera buying shoes for homeless man. *USA Today*. <https://www.usatoday.com/story/news/humankind/2015/12/03/officer-caught-camera-buying-homeless-man-shoes/76727994/>; de Stefano, A. (2017). Larry DePrimo, NYPD cop, buys homeless man boots. *Huffington Post*. https://www.huffingtonpost.com/2012/11/29/larry-deprimo-nypd-cop-gives-homeless-boots_n_2209178.html.
33. Wilson, M. (2014). After leaving victim in the cold, the police work to make it right. *The New York Times*. <https://www.nytimes.com/2014/03/22/nyregion/after-leaving-victim-in-the-cold-the-police-work-to-make-it-right.html>.
34. PoliceOne.com. (2013). Arizona cop praised for giving bike, riding lessons to teen. <https://www.youtube.com/watch?v=DcQ8M3hCeWc>; KTVU News. (2016). Teen who walked 2 hours to work surprised by cop who buys him bike. <http://www.ktvu.com/news/mobile-app-ktvu/teen-who-walked-2-miles-to-work-surprised-by-cop-who-buys-him-bike>
35. See this and other such instances in Burger, L. (2014). 5 cases that fight the stigma of 'unethical' policing. PoliceOne.com. <https://www.policeone.com/police-jobs-and-careers/articles/7063313-5-cases-that-fight-the-stigma-of-unethical-policing/>.
36. Pound, R. (1906, August 29). The causes of popular dissatisfaction with the administration of justice [Address before the annual convention of the American Bar Association]. *American Lawyer*, 14, 445.
37. MacKenzie, J. P. (1974). *The appearance of justice*. Scribner.
38. Calamandrei, P., quoted in Greenberg, F. (1976). The task of judging the judges. *Judicature*, 59, 464.
39. For thorough discussions and examples of these areas of potential ethical shortcomings, see Gardner Geyh, C., Alfini, J. J., & Sample, J. (2020). *Judicial conduct and ethics* (6th ed.). Matthew Bender.
40. Case studies taken from Son, J. (2014). Top 5 list of real-life judicial misconduct. *Ballotpedia*. https://ballotpedia.org/Top_5_List_of_Real-Life_Judicial_Misconduct.
41. *Ibid.*, p. vi.
42. Murphy, T. (1998). Test your ethical acumen. *Judges' Journal*, 8, 34.
43. Berens, M., & Shiffman, J. (2020, June 30). Thousands of U.S. judges who broke laws or oaths remained on the bench. *Reuters*. <https://www.reuters.com/investigates/special-report/usa-judges-misconduct/>.
44. Shaman, Lubet, & Alfini, *Judicial Conduct and Ethics*, p. viii.
45. *Berger v. U.S.*, 295 U.S. 78 (1935).
46. See *Dunlop v. U.S.*, 165 U.S. 486 (1897), involving a prosecutor's inflammatory statements to the jury.
47. 386 U.S. 1 (1967). In this case, the Supreme Court overturned the defendant's conviction after determining that the prosecutor "deliberately misrepresented the truth."
48. Cohen, E. D. (1996). Pure legal advocates and moral agents: Two concepts of a lawyer in an adversary system. In M. C. Braswell, B. R. McCarthy, & B. J. McCarthy (Eds.), *Justice, crime and ethics* (2nd ed., p. 168). Anderson.
49. See Freeman, B. (2015). Wife-beating judge loses it: Why Mark Fuller's new defense is beyond the pale. *Salon*. http://www.salon.com/2015/03/31/wife_beating_judge_loses_it_why_mark_fullers_new_defense_is_beyond_the_pale/.
50. *Ibid.*
51. *Ibid.*, pp. 131–167.
52. Conlon, C. K., & Milord, L. L. (n. d.). *The ethics fieldbook: Tools for trainers* (pp. 23–25). American Judicature Society.
53. Administrative Office of the United States Courts. (n.d.). *Code of conduct for United States judges*. <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx>; further guidance appears in Federal Judicial Center. (2002). *Guide to judiciary policies and procedures* (Vol. 2): *Maintaining the public trust—Ethics for federal judicial law clerks*.
54. Criminal Justice Research. (n.d.). Correctional ethics. <http://criminal-justice.iresearchnet.com/criminal-justice-ethics/correctional-ethics/>
55. *Ibid.*, p. 28.
56. See, for example, Chenault, S. (2010). *An ethnographic examination of correctional officer culture in a midwestern state* [Doctoral dissertation, University of Nebraska]. https://www.corrections.nebraska.gov/sites/default/files/files/46/chenault_2010_2.pdf; also see Grossi, E. L., & Berg, B. L. (1991). Stress and job dissatisfaction among correctional officers: An unexpected finding. *International Journal of Offender Therapy and Comparative Criminology*, 35, 79.
57. See Chamberlain, M., & Hompe, B. (2020). Causes of stress for corrections officers. *Lexipol*. <https://www.lexipol.com/resources/blog/causes-of-stress-for-correctional-officers/>; also see Janis, I. L. (1968). Group dynamics under conditions of external danger. In D. Cartwright & A. Zander (Eds.), *Group dynamics: Research and theory*. Harper & Row.
58. *Ibid.*
59. See American Correctional Association. (n.d.). Code of ethics. http://www.aca.org/ACA_Prod_IMIS/ACA_Member/About_Us/Code_of_Ethics/ACA_Member/AboutUs/Code_of_Ethics.aspx?hkey=61577ed2-c0c3-4529-bc01-36a248f79eba.
60. Adapted from Florida Regional Community Policing Institute. (2005, March). *Ethical issues and decisions in law enforcement*, 37–39. <http://cop.spcollege.edu/Training/Ethics/EN/ethicsInstructorMarch2005.pdf>.
61. Kleinig, *The ethics of policing*.
62. Adapted from Cox, G. D. (1999, May 3). Judges behaving badly [again]. *National Law Journal*, 21, 1–5.

CHAPTER 5

1. King, M. (2021). 'The world is looking at us': Minneapolis puts 'defund the police' to a vote. *Politico*. <https://www.politico.com/news/2021/09/22/minneapolis-reckoning-defund-the-police-513568>.
2. Merrefield, C. (2021). 'Defund the police': What it means and what the research says on whether more police presence reduces crime. *The Journalist's Resource*. <https://journalistsresource.org/criminal-justice/defund-the-police/>.
3. Cillizza, C. (2021). Even Democrats are now admitting 'defund the police' was a massive mistake. *CNN Politics*. <https://edition.cnn.com/2021/11/05/politics/defund-the-police-democrats/index.html>.
4. Wish, B. D. (2020). What if the police revolt? *Medium*. <https://medium.com/illumination/what-if-the-police-revolt-ca5a44ba4790>.
5. Smith, B. (1933). *Rural crime control* (p. 40). Columbia University.
6. Ibid.
7. Ibid.
8. Ibid., 182–84.
9. Ibid., 188–89.
10. Ibid., 218–22.
11. Ibid., 245–46.
12. Johnson, D. R. (1981). *American law enforcement history* (p. 18–19). Forum Press.
13. Radzinowicz, L. (1968). *A history of English criminal law and its administration from 1750* (Vol. IV): *Grappling for control* (pp. 20–21). Stevens and Son.
14. Germann, C., Day, F. D., & Gallati, R. R. J. (1962). *Introduction to law enforcement and criminal justice* (p. 63). Charles C Thomas.
15. Johnson, *American law enforcement history*, 26.
16. Richardson, J. F. (1974). *Urban police in the United States*. Kennikat Press.
17. Johnson, *American law enforcement history*, 26.
18. Goldstein, H. (1977). *Policing a free society*. Ballinger.
19. Vollmer, A. (1933). Police progress in the past 25 years. *Journal of Criminal Law and Criminology*, 24, 161–175.
20. Parker, A. E. (1961). *Crime fighter: August Vollmer*. Macmillan.
21. Douthit, N. (1983). August Vollmer. In C. B. Klockars (Ed.), *Thinking about police: Contemporary readings* (p. 102). McGraw-Hill.
22. Ibid.
23. Ibid.
24. Richardson, *Urban police in the United States*, 139–143.
25. Goldstein, *Policing a free society*.
26. Peak, K. J., & Glensor, R. W. (2016). *Community policing and problem solving: Effectively addressing crime and disorder* (7th ed., pp. 10–11). Pearson.
27. Cumming, E., Cumming, I., & Edell, L. (1965). Policeman as philosopher, guide, and friend. *Social Problems*, 12, 285; Bercal, T. (1970). Calls for police assistance. *American Behavioral Scientist*, 13, 682; Reiss, A. J. Jr. (1971). *The police and the public*. Yale University Press.
28. Bureau of Justice Statistics. (2019, January). *Federal law enforcement statistics, 2015–2016: Summary*, pp. 1–3. https://www.bjs.gov/content/pub/pdf/fjs1516_sum.pdf.
29. U.S. Department of Homeland Security. (n.d.). Creation of the Department of Homeland Security. <http://www.dhs.gov/creation-department-homeland-security>.
30. Watson Institute. (2021, June). Costs of war. <https://watson.brown.edu/costsofwar/costs/economic/budget/dhs>
31. U.S. Department of Homeland Security. (2018, August). The lifesaving missions of CBP. <https://www.dhs.gov/news/2018/08/20/life-saving-missions-cbp>
32. Department of Homeland Security. (2021). On a typical day in fiscal year 2020, CBP. <https://www.cbp.gov/newsroom/stats/typical-day-fy2020>
33. U.S. Immigration and Customs Enforcement (ICE). (n.d.). About. <https://www.ice.gov/about-ice#>
34. ICE. (n.d.). Enforcement and removal operations. <http://www.ice.gov/about/offices/enforcement-removal-operations/>
35. ICE. Keeping America safe. <https://www.ice.gov/>
36. Transportation Security Administration. (n.d.). Jobs at TSA. <https://www.tsa.gov/about/jobs-at-tsa>
37. Transportation Security Administration. (2021). By the numbers. <https://www.tsa.gov/news/press/factsheets/tsa-numbers>
38. See U.S. Coast Guard. (n.d.). The Coast Guard is America's maritime first responder. <https://www.uscg.mil/>
39. U.S. Secret Service. (n.d.). Frequently asked questions about us. <https://www.secretservice.gov/about/faq/general#:~:text=How%20many%20people%20are%20employed,professional%20and%20administrative%20support%20personnel>
40. U.S. Secret Service. (n.d.). About. <https://www.secretservice.gov/about/history/>; also see <https://www.secretservice.gov/about/faqs/>. Also see *Annual Report FY2020* at <https://www.secretservice.gov/sites/default/files/reports/2021-03/2020-Annual-Report.pdf>
41. Federal Protective Service. (n.d.). What we do. <https://www.dhs.gov/fps-what-we-do-fps-services>
42. For more information, see CISA homepage at <https://www.cisa.gov/>
43. For more information, see <https://www.fletc.gov/>
44. U.S. Department of Justice Federal Bureau of Investigation. (n.d.). A brief history. <https://www.fbi.gov/history/brief-history>
45. U.S. Department of Justice, Federal Bureau of Investigation. (n.d.). *Mission and priorities*. <https://www.fbi.gov/about/mission>
46. Ibid.
47. The Nation. (2008, August 22). FBI seeks sweeping new powers. www.thenation.com/article/fbi-seeks-sweeping-new-powers
48. Bureau of Alcohol, Tobacco, Firearms and Explosives. (n.d.). *ATF's history*. <http://www.atf.gov/about/history/>
49. Bureau of Alcohol, Tobacco, Firearms and Explosives. (n.d.). Fact sheet—Facts and figures for fiscal year 2020. <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2020>
50. U.S. Department of Justice, Drug Enforcement Administration (n.d.).

- DEA history. <http://www.justice.gov/dea/about/history.shtml>
51. Ibid., DEA mission statement, <http://www.dea.gov/about/mission>
 52. Ibid., Domestic arrests, <https://www.dea.gov/data-and-statistics/domestic-arrests>
 53. See U.S. Marshals Service, Facts and figures, 2021. <https://www.usmarshals.gov/duties/factsheets/facts.pdf>
 54. U.S. Marshals Service. (1994). *The FY 1993 report to the U.S. Marshals* U.S. Department of Justice; also see U.S. Marshals Service (2011). Fact sheets: Facts and figures. Office of Public Affairs. <http://www.usmarshals.gov/duties/factsheets/facts-2011.html>
 55. Central Intelligence Agency. (n.d.). CIA vision, mission, & values. <https://www.cia.gov/about-cia/cia-vision-mission-values/index.html>; also see CIA. (n.d.). About CIA. <https://www.cia.gov/about-cia/index.html>
 56. Central Intelligence Agency. (n.d.). Careers & internships. <https://www.cia.gov/careers/opportunities/cia-jobs/index.html>.
 57. Internal Revenue Service. Financial Investigations: Criminal investigation (CI). [http://www.irs.gov/uac/Financial-Investigations—Criminal-Investigation-\(CI\)](http://www.irs.gov/uac/Financial-Investigations—Criminal-Investigation-(CI))
 58. Ibid.; also see IRS, *Criminal investigation: Annual report, 2020*. <https://www.irs.gov/pub/irs-pdf/p3583.pdf>
 59. See INTERPOL, <https://www.interpol.int/en>
 60. Ibid., Article 3, file:///C:/Users/peak_/Downloads/article-3-ENG-february-2013.pdf; for more information, see its *Annual Report 2020*, file:///C:/Users/peak_/Downloads/Annual%20report%202020_EN_i.pdf
 61. Reaves, B. R. (2015, May). *Census of state and local law enforcement agencies, 2013*. Bureau of Justice Statistics. <http://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf>. This is the most recent report available.
 62. Missouri State Highway Patrol, Career Recruitment Division. (n.d.). Duties of a trooper. <http://www.mshp.dps.missouri.gov/MSHPWeb/PatroLDivisions/HRD/Trooper/troopCareer.html>.
 63. State of Hawaii Department of Public Safety. <http://dps.hawaii.gov/about/>
 64. National Association of Attorneys General. http://www.naag.org/naag/about_naag/faq/what_does_an_attorney_general_do.php
 65. Bureau of Justice Statistics. (2016, October 4). *National sources of law enforcement employment data*, p. 1. <https://www.bjs.gov/content/pub/pdf/nsled.pdf>
 66. Hyland, S. S. (2019). *Local police departments, 2016: Personnel*. U.S. Department of Justice, Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/lpd16p.pdf>
 67. Brooks, C. (2021). *Sheriffs' offices, 2016: Personnel*. Bureau of Justice Statistics, October 2019 (revised January 27, 2021), p. 1. <https://bjs.ojp.gov/content/pub/pdf/so16p.pdf>
 68. Gardiner, C. L. (2019). College cops around the nation: A 30-year and 40-year update on the state of higher education in US policing. *Policing*. <https://doi.org/10.1093/policing/paz029>
 69. U.S. Bureau of Labor Statistics. (n.d.). Occupational outlook handbook: Police and detectives. <https://www.bls.gov/ooh/protective-service/police-and-detectives.htm>
 70. See, generally, Hyland, *Local police departments, 2016: Personnel*.
 71. Brooks, *Sheriffs' offices, 2016*.
 72. See, generally, *ibid.*
 73. For more information, see The hiring process, *Discover policing*. <https://www.discoverpolicing.org/about-policing/the-hiring-process/#:~:text=Agencies%20typically%20use%20a%20fitness,%2C%20endurance%2C%20and%20cardiovascular%20health>
 74. See Neal, J. (2018, September 19). Can your agency force you to relocate? *Federal News Network*. <https://federalnewsnetwork.com/commentary/2018/09/can-your-agency-force-you-to-relocate/>
 75. See Belling, T. (2021). Police officers and tattoos. *CaseLaw4Cops*. http://www.caselaw4cops.net/articles/police_officers_and_tattoos.html#:~:text=The%20best%20way%20to%20avoid,hands%2C%20neck%2C%20or%20face
 76. Astor, S. D. (1978). A nation of thieves. *Security World*, 15.
 77. Morgan, R. E., & Truman, J. L. (2020). *Criminal victimization—2019*. Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/cv19ov/content/pub/pdf/cv19ov>
 78. Bureau of Labor Statistics. (2021). Occupational outlook handbook: Security guards and gambling surveillance officers. <https://www.bls.gov/ooh/protective-service/security-guards.htm>
 79. Ibid.
 80. History Channel. (2015, October 23). 10 things you may not know about the Pinkertons. <https://www.history.com/news/10-things-you-may-not-know-about-the-pinkertons>
 81. Cole, G. F., & Smith, C. E. (2007). *The American system of criminal justice* (11th ed., p. 253). Thomson Wadsworth.
 82. For a thorough look at the training needs of the field, see Saloman, D. (2021). Looking ahead: Shifts in training needed for security guard use of force. *Security Management*. <https://www.asisonline.org/security-management-magazine/latest-news/online-exclusives/2021/shifts-in-training-needed-for-security-guard-use-of-force/>
 83. Walter, S., & Gabrielson, R. (2014, December 9). America's gun-toting guards armed with poor training, little oversight. Center for Investigative Reporting. <https://www.revealnews.org/article/americas-gun-toting-security-guards-may-not-be-fit-for-duty/>; also see Duncan, B. (2015). 5 ways the armed-guard industry is out of control. *Reveal*. <https://www.revealnews.org/article/heres-whats-wrong-with-the-us-armed-security-industry/>; First Security. (n.d.). Should your security guards be armed or not? <https://www.firstsecurityservices.com/should-your-security-guards-be-armed-or-not/>

CHAPTER 6

1. *Associated Press*. (2021). Crime historian conducts dig for D. B. Cooper case evidence. <https://apnews.com/article/oddities-db-cooper-2b5cb8f235c0d9ca48d489e4713d6be0>
2. Wang, A. B. (2017, January 16). The D. B. Cooper case baffled investigators for decades. Now, scientists have a new theory. *The Washington Post*. <https://www.washingtonpost.com/news/post-nation/wp/2017/01/16/>

- the-d-b-cooper-case-baffled-investigators-for-decades-now-scientists-have-a-new-theory/
3. See CitizenSleuths.com. <https://citizensleuths.com/titaniumparticles.html>; for one of the more insightful, illustrated accounts of the investigation, see Williams, A. (2021, September 27). Is D.B. Cooper still on the run? *Seattlmet*. <https://www.seattlmet.com/news-and-city-life/db-cooper-hijacking-unsolved-true-crime-washington-state>
 4. Westley, W. A. (1970). *Violence and the police*. MIT Press.
 5. Quoted in Leonard, V. A., & More, H. W. (1971). *Police organization and management* (3rd ed., p. 128). Foundation Press.
 6. U.S. Department of Justice, Bureau of Justice Statistics. (2015). Local police departments, 2013: Personnel, policies, and practices (p. 7)..
 7. National Advisory Commission on Criminal Justice Standards and Goals. (1973). *Police* (p. 369). U.S. Government Printing Office.
 8. Lynch, G. W. (1986, September 20). Why officers need a college education. *Higher Education and National Affairs*, 11.
 9. Eddusaver. (2019). Pros and cons of graduate police officers. <https://www.eddusaver.com/pros-and-cons-of-graduate-police-officers/>.
 10. Kappeler, V. E., Sapp, A. D., & Carter, D. L. (1992). Police officer higher education, citizen complains and departmental rule violations. *American Journal of Police*, 11, 37–54.
 11. Weirman, C. L. (1978, August). Variations of ability measurement scores obtained by college and non-college educated troopers. *The Police Chief*, 45, 34–36.
 12. Ibid.
 13. Trojanowicz, R., & Nicholson, T. (1976, August). A comparison of behavioral styles of college graduate police officers v. noncollege-going police officers. *The Police Chief*, 43, 56–59.
 14. Dalley, A. F. (1975). University and non-university graduated policemen: A study of police attitudes. *Journal of Police Science and Administration*, 3, 458–468.
 15. Cascio, W. F. (1977). Formal education and police officer performance. *Journal of Police Science and Administration*, 5, 89–96; Bernard Cohen, B., & Chaiken, J. M. (1972). *Police background characteristics and performance*. RAND; Sanderson, B. E. (1977, August). Police officers: The relationship of college education to job performance. *The Police Chief*, 62–6.
 16. Sterling, J. W. (1974, April). The college level entry requirement: A real or imagined cure-all? *The Police Chief*, 41, 28–31.
 17. Lynch, G. W. (1987, April 4). Cops and college. *America*, 274–275.
 18. Stamper, N. (2005). *Breaking rank: A top cop's exposé of the dark side of American policing* (p. 178). Nation Books.
 19. See, for example, Bruns, D., & Magnan, K. (2014, December). Police officer perspectives on higher education: Is the degree a necessary ingredient for the performance and behavior of police officers? *Journal of Law and Criminal Justice*, 2(2), 27–45.
 20. U.S. Department of Justice, Bureau of Justice Statistics. (2021, July). *State and local law enforcement training academies, 2018* 1, 6. <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/slleta18st.pdf>
 21. Ibid., p. 111.
 22. Asher, J., & Horwitz, B. (2021, November 8). How do the police actually spend their time? *The New York Times*. <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.
 23. Skolnick, J. H., & Bayley, D. H. (1986). The new blue line: Police innovation in six American cities (p. 4). Free Press.
 24. Skolnick, J. (1974). A sketch of the policeman's working personality. In J. Goldsmith & S. S. Goldsmith (Eds.), *The police community* (p. 106). Palisades.
 25. Wilson, J. Q. (1968). *Varieties of police behavior* (pp. 140–226). Harvard University Press.
 27. National Law Enforcement Officers Memorial Fund. (2019). Deaths, assaults and injuries. <https://nleomf.org/facts-figures/deaths-assaults-and-injuries>
 28. Officer Down Memorial Page. (n.d.). Honoring officers killed in 2020. <https://www.odmp.org/search/year/2020>
 29. Federal Bureau of Investigation. (2021). *Law enforcement officers killed and assaulted, 2020*. https://s3-us-gov-west-1.amazonaws.com/cg-d4b776d0-d898-4153-90c8-8336f86bdfec/LEOKA_press_release_2020_data.pdf
 30. Krajick, K. (1978, September). Does patrol prevent crime? *Police Magazine*, 1, 4–16.
 31. Snider, M. (2018, November 12). Hoverbikes may soon patrol streets of Dubai as police test flying motorbikes. *USA Today*; CNN. (2017, October 13). Watch Dubai police test its latest gadget—A flying motorbike. <https://www.cnn.com/2017/10/13/middleeast/dubai-police-hoversurf-flying-motorbike/index.html>.
 32. Bartlett, J. (Ed.). (1992). *Familiar quotations* (16th ed.). Little, Brown. .
 33. Morash, M., & Haarr, R. (1991, March 12). Gender, workplace problems, and stress in policing [Paper presentation]. Annual Meeting of the Academy of Criminal Justice Sciences, Nashville, TN.
 34. Klockars, C. B., & Mastrofski, S. D. (1991). Police discretion: The case of selective enforcement. In C. B. Klockars & S. D. Mastrofski (Eds.), *Thinking about police: Contemporary readings* (2nd ed., p. 330). McGraw-Hill.
 35. Bayley, D. H., & Bittner, E. (1989). Learning the skills of policing. In R. G. Dunham & G. P. Alpert (Eds.), *Critical issues in policing: Contemporary readings* (pp. 87–110). Waveland.
 36. Davis, K. C. (1975). *Police discretion* (p. 73). West.
 37. Davis, K. C. (1969). *Discretionary justice* (p. 222).
 38. Klockars and Mastrofski, Police discretion, p. 331.
 39. U.S. Department of Justice, Bureau of Justice Statistics. (2018). *State and local law enforcement training academies*, p. 10.
 40. Frank, L. R. (Ed.). (1999). *Random House Webster's Quotationary* (p. 761). Random House.
 41. Moore, S. (2008, October 24). Progress is minimal in clearing DNA cases. *The New York Times*. <http://www.nytimes.com/2008/10/25/us/25dna.html>

42. See [crimesceneinvestigatoredu.org](https://www.crimesceneinvestigatoredu.org/what-is-forensic-science/). (2021). *What is forensics?* <https://www.crimesceneinvestigatoredu.org/what-is-forensic-science/>
 43. See American Academy of Forensic Sciences. (2021). Criminalistics. <https://aafs.org/Home/Resources/Students/Sections/Criminalistics.aspx>
 44. DeForest et al., *Forensic Science*, 29.
 45. See Complete Forensics. (2021). Collecting and preserving trace evidence at a crime scene [Locard's exchange principle]. <https://www.completeforensics.org.uk/collecting-and-preserving-trace-evidence-at-a-crime-scene-locards-exchange-principle/>.
 46. President's Commission on Law Enforcement and the Administration of Justice. (1967). *Task force report: Science and technology* (pp. 7–18). U.S. Government Printing Office.
 47. Weston, P. B., & Wells, K. M. (1986). *Criminal investigation: Basic perspectives* (4th ed., pp. 5–10). Prentice Hall.
 48. U.S. Department of Justice, National Institute of Justice. (2004). *Crime scene investigation: A reference for law enforcement training*. Author.
 49. Natapoff, A. (n.d.). Snitching and use of criminal informants. *Oxford bibliographies*. <http://www.oxfordbibliographies.com/view/document/obo-9780195396607/obo-9780195396607-0044.xml>
 50. See, for example, Browne, C. (2013). Police interview techniques. *Chron*. <http://work.chron.com/police-interview-techniques-11580.html>; Fisher, R. P., & Geiselman, R. E. (2010, November–December). The cognitive interview method of conducting police interviews: Eliciting extensive information and promoting therapeutic jurisprudence. *International Journal of Law and Psychiatry*, 23(5), 321–328. <http://www.sciencedirect.com/science/article/pii/S0160252710000762>; Finney, S. (n.d.). Interview & interrogation. University of Texas at Dallas. <http://www.learningace.com/doc/2638370/4822684bc121a8f797316ce9c5fe573a/interview-interrogation>
 51. Tilley, N. (2013, April). *Analyzing and responding to repeat offending*. Office of Community Oriented Policing Services, Problem-Oriented Guides for Police Problem-Solving Tools, 11, 7. https://popcenter.asu.edu/sites/default/files/analyzing_and_responding_to_repeat_offending.pdf
 52. See *ibid*.
 53. For an excellent overview of PIVOT, see Madensen, T. D., Herold, M., Hammer, M. G., & Christenson, B. R. (2017, April). Place-based investigations to disrupt crime place networks. *The Police Chief*. Research in Brief, p. 15. [https://www.theiacp.org/sites/default/files/Research%20Center/RIB-Place-Based-Investigations-to-Disrupt-Crime-Place-Networks%20\(1\)%20\(1\).pdf](https://www.theiacp.org/sites/default/files/Research%20Center/RIB-Place-Based-Investigations-to-Disrupt-Crime-Place-Networks%20(1)%20(1).pdf)
 54. DeForest et al., *Forensic Science*, 11.
 55. Dempsey, J. S., & Forst, L. S. (2012). *An introduction to policing* (6th ed., p. 470). Cengage.
 56. University of Michigan Law School. (n.d.). The national registry of exonerations: Exonerations by state. <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>
-
- ## CHAPTER 7
1. See Reiss, A. (1971). The police and the public (p. 96). Yale University Press; Kappeler, V. E. (n.d.). So you want to be a crime fighter? Not so fast. *Police studies online, Eastern Kentucky University*. https://plsonline.eku.edu/insidelook/so-you-want-be-crime-fighter-not-so-fast#_ga=2.140760626.161966997.1566777800-864040394.1566777800
 2. See PoliceOne.com. (2014, May 14). NY police apologize to victim with food, favors. <https://www.policeone.com/police-heroes/articles/6999864-NY-police-apologize-to-victim-with-food-favors/>; PoliceOne.com. (2013, May 13). Arizona cop praised for giving bike, riding lessons to teen. <https://www.youtube.com/watch?v=DcQ8M3hCeWc>; KTVU News. (2016, September 21). Teen who walked 2 hours to work surprised by cop who buys him bike. <http://www.ktvu.com/news/mobile-app-ktvu/teen-who-walked-2-miles-to-work-surprised-by-cop-who-buys-him-bike>
 3. National Law Enforcement Officers Memorial Fund. (n.d.). Year-by-year breakdown of law enforcement deaths throughout U.S. history. <https://nleomf.org/wp-content/uploads/2021/08/fatalities-year-updated-8-13-2021.pdf>
 4. Sullivan, J., Anthony, Z., Tate, J., & Jenkins, J. (2018, January 6). Police fatally shot nearly 1,000 people, and 46 officers were killed, nationwide in 2017. *The Washington Post*. <http://www.chicagotribune.com/news/nation-world/ct-nationwide-police-fatal-shootings-2017-20180106-story.html>
 5. Adapted from *Time*. (2021, May 24/ May 31). Global movements for justice. 66–70.
 6. Morin, R. (2020, June 6). Americans' perceptions of police drop significantly in one week as protests continue, survey finds. *USA TODAY*. <https://www.usatoday.com/story/news/politics/2020/06/06/americans-views-police-drop-significantly-amid-protests-survey/3159072001/>
 7. Zhou, L. (2021). Where Americans stand on policing. *Vox Media*. <https://www.vox.com/22372342/police-reform-derek-chauvin>
 8. See Flaccus, G. (2020, September 4). Portland's grim reality: 100 days of protests, many violent. *Associated Press*. <https://apnews.com/article/virus-outbreak-ap-top-news-race-and-ethnicity-id-state-wire-or-state-wire-b57315d97dd2146c4a89b-4636faa7b70>
 9. See Flaccus, G. (2020, October, 15). Oakland, Portland sue over use of federal agents at protests. *Associated Press*. <https://apnews.com/article/san-francisco-lawsuits-oregon-racial-injustice-courts-5291c46cf916ab74d8814fa171a7cf21>; also see Sparling, Z. (2020, September 19). Portland protest arrests top out at nearly 1,000—for now. *Portland Tribune*. <https://pamplinmedia.com/pt/481167-388210-portland-protest-arrests-near-1000-as-uprising-resumes>; Ryan, J. (2020, August 25). Riot declared as Portland protests move to city hall on 3-month anniversary of George Floyd's death. *The Oregonian/Oregon Live*. <https://www.oregonlive.com/portland/2020/08/portland-protests-continue-on-3-month-anniversary-of-george-floyds-death.html>
 10. Shannon, J. (2020, June 28). *USA TODAY* poll: Americans want major police reform, more focus

- on serious crime. *USA TODAY*. <https://www.usatoday.com/story/news/nation/2020/06/29/us-police-reform-poll-finds-support-more-training-transparency/3259628001/>
11. Crabtree, S. (2020). Most Americans say policing needs 'major changes'. *Gallup*. <https://news.gallup.com/poll/315962/americans-say-policing-needs-major-changes.aspx>
 12. U.S. Department of Justice, Bureau of Justice Statistics. (2016). *State and local law enforcement training academies, 2013* (p.1–19). <https://www.bjs.gov/content/pub/pdf/slleta13.pdf>
 13. Quoted in Whidden, J. (2018, February 18). Retiring Milwaukee police chief discusses justice system. *Marquette Wire*. <https://marquettewire.org/3986792/news/retiring-milwaukee-police-chief-discusses-justice-system/>
 14. Bates, J. (2021, May 10/May 17). Beyond the verdict: What's next for the police-reform movement. *Time*, 50.
 15. See, for example, McCullough, J. (2021, May 25). A year after George Floyd's murder, only a few of Texas lawmakers' police reform measures appear likely to become law. *The Texas Tribune*. <https://www.texastribune.org/2021/05/25/texas-george-floyd-police-reform-legislation/>
 16. Chow, A. R. (2021, May 24/May 31). Why hasn't the police killing rate decreased? *Time*, 65.
 17. Ibid.
 18. Khalil, A. (2020, June 29). DC mayor caught between activists, police in funding battle. *Associated Press*. <https://www.usnews.com/news/politics/articles/2020-06-28/dc-mayor-caught-between-activists-police-in-funding-battle>
 19. Johnson, G. (2021, May 18). Washington governor signs sweeping police reform measures. *Associated Press*. <https://apnews.com/article/george-floyd-death-of-george-floyd-washington-police-reform-police-dcf0947e2ffcc89babfb79a7e69c1bc1>
 20. Ritter, K. (2021, May 26). Nevada governor signs 2 police reforms on Floyd anniversary. *Associated Press*. <https://www.usnews.com/news/best-states/nevada/articles/2021-05-25/nevada-governor-signs-2-police-reforms-on-floyd-anniversary>
 21. Halter, N. (2021, May 25). Minneapolis police reform stalls as violence in the city surges. *Axios*. <https://www.axios.com/minneapolis-police-reform-stalls-4ded2d22-ec43-43bf-b9c7-ca09e5a1cfd4.html>
 22. Touchstone, J. R. (2019, September 3). California governor signs Assembly Bill 392 into law, mandating standard for use of deadly force, California Peace Officers Association. <https://cpoa.org/california-governor-signs-assembly-bill-392-into-law-mandating-standard-for-use-of-deadly-force/>; also see Reed, L. T. (2019, August 19). Governor Newsom signs Police Use-of-Force Bill AB 392. <https://www.calpublicagencylaboremploymentblog.com/uncategorized/governor-newsom-signs-police-use-of-force-bill-ab-392/>
 23. Evstatieva, M., & Mak, T. (2020, June 16). How decades of bans on police chokeholds have fallen short. *NPR*. <https://www.npr.org/2020/06/16/877527974/how-decades-of-bans-on-police-chokeholds-have-fallen-short>
 24. Weiser, B. (2021, February 16). Police unions lose bid to keep disciplinary records a secret. *The New York Times*. <https://www.nytimes.com/2021/02/16/nyregion/nypd-discipline-records-ruling.html>
 25. Vladeck, S. (2020, July 17). What the heck are federal law enforcement officers doing in Portland? *Lawfare*. <https://www.lawfareblog.com/what-heck-are-federal-law-enforcement-officers-doing-portland>
 26. See Wilson, C. (2021, April 21). DHS sent more than 750 federal officers, spent millions responding to Portland protests. *Oregon Public Broadcasting*. <https://www.opb.org/article/2021/04/21/dhsreport-says-750-federal-officers-sent-to-2020-protests-in-portland/>; also see the full report at <https://www.oig.dhs.gov/sites/default/files/assets/2021-04/OIG-21-31-Mar21.pdf>.
 27. Quoted in President's Task Force on 21st Century Policing, *Interim Report of the President's Task Force on 21st Century Policing*, 9.
 28. What is CAHOOTS? (2020, October 29). <https://whitebirdclinic.org/what-is-cahoots/>. Gratitude is extended to Undersheriff Dan Coppa (ret'd), Washoe County Sheriff's Office, Reno, Nevada, for providing information concerning this program.
 29. See U.S. Supreme Court. (2020, June 15). Certiorari—Summary Dispositions. https://www.supremecourt.gov/orders/courtorders/061520zor_f2bh.pdf; also see Simmons, T. (2020, June 15). U.S. Supreme Court won't hear Caldwell woman's case after SWAT team damaged her home. *Idaho Press*. https://www.idahopress.com/news/local/u-s-supreme-court-wont-hear-caldwell-womans-case-after-swat-team-damaged-her-home/article_d3e588bd-2369-50c3-8607-ae9c4b7226a4.html
 30. FindLaw. (2021). Qualified immunity: Both sides of the debate. <https://supreme.findlaw.com/supreme-court-insights/pros-vs-cons-of-qualified-immunity-both-sides-of-debate.html>
 31. For more information, see Carlisle, M. (2021, June 3). The debate over qualified immunity is at the heart of police reform. Here's what to know. *TIME*. <https://time.com/6061624/what-is-qualified-immunity/>
 32. *Graham v. Connor*, 490 U.S. 386 (1989): 397.
 33. Baldwin, J. (1962). Nobody knows my name: More notes of a native son (p. 98). Dial Press.
 34. Quoted in *ibid.*, 2.
 35. President's Task Force on 21st Century Policing. *Interim Report of the President's Task Force on 21st Century Policing*, 1.
 36. Adapted from *ibid.*, 5–10.
 37. Peak, K. J. (2009). *Policing America: Challenges and best practices* (6th ed., p. 263). Prentice Hall.
 38. Germann, C., Day, F. D., & Gallati, R. R. (1976). *Introduction to law enforcement and criminal justice* (p. 225). Charles C Thomas.
 39. See, *The Economist*. (2018, August 18). The shortcomings of India's police are not entirely their fault. <https://www.economist.com/asia/2018/08/18/the-shortcomings-of-indias-police-are-not-entirely-their-fault>; also see Human Rights

- Watch. (2009). India: Overhaul abusive, failing police system. <https://www.hrw.org/news/2009/08/04/india-overhaul-abusive-failing-police-system>; Human Rights Watch (2009). Broken system dysfunction, abuse, and impunity in the Indian police. <https://www.hrw.org/sites/default/files/reports/india0809web.pdf>
40. Linderman, J. (2015, September 9). Baltimore police, city officials get ready for 2nd pretrial hearing in Freddie Gray case. *U.S. News & World Report*. <https://www.usnews.com/news/us/articles/2015/09/09/experts-say-settlement-in-gray-case-could-affect-hearing>
 41. Heisig, E. (2016, April 15). Cleveland's \$6 million settlement in Tamir Rice case likely city's largest for a police shooting. *Cleveland.com*. http://www.cleveland.com/court-justice/index.ssf/2016/04/clevelands_6_million_settlement_1.html
 42. See, for example, City of New York. (2018, February 20). *Annual claims report*. <https://comptroller.nyc.gov/reports/annual-claims-report/>; Crain's Chicago Business. (2016). How Chicago racked up a \$662 million police misconduct bill. *Crain's Chicago Business*. <https://www.chicagobusiness.com/article/20160320/NEWS07/160319758/how-chicago-racked-up-a-662-million-police-misconduct-bill>
 43. Barrineau, H. E. III. (1987). *Civil liability in criminal justice* (p. 58). Pilgrimage.
 44. Ibid., 5.
 45. See, for example, *Black v. Stephens*, 662 F.2d 181 (1991).
 46. *Fielder v. Jenkins* (N.J. Super. A.D. 1993833 A.2d 906).
 47. Peak, K. J., Gaines, L. K., & Glensor, R. W. (2010). *Police supervision and management: In an era of community policing* (3rd ed.). Prentice Hall.
 48. *Thomas v. Williams*, 124 S.E.2d 409 (Ga. App. 1962).
 49. *Guice v. Enfinger*, 389 S.O.2d 270 (Fla. App. 1980).
 50. *Davis v. City of Detroit*, 386 N.W.2d 169 (Mich. App. 1986).
 51. Adapted from Thompson, C. W. (2021, January 25). Fatal police shootings of unarmed Black people reveal troubling patterns. *NPR*. <https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns>. The jury in the civil trial was unanimous in its finding that the deputy had no right to detain Pickett; had used unreasonable or excessive force against him, which caused his death; and delayed getting him medical care. Pickett's family was awarded \$33.5 million, one of the largest amounts ever in an officer-involved shooting case.
 52. Palmer, R. (Chief of Police). (1998). *Procedure manual*. Tulsa, OK, Police Department.
 53. The U.S. Supreme Court said, in a 7–2 decision, that Gonzales could not sue the city and claim the police had violated her rights to due process. Furthermore, it held she had no constitutionally protected interest in the enforcement of the restraining order. The opinion also established that the holder of a restraining order is not entitled to any specific mandatory action by the police; rather, restraining orders only provide grounds for arresting the person restrained by order. See *Castle Rock v. Gonzales*, 545 U.S. 748 (2005).
- ## CHAPTER 8
1. Lange prevailed; in a mid-2021 decision, the Court held that pursuit of a fleeing *misdemeanor* suspect does *not* categorically qualify as an exigent circumstance that justifies a warrantless entry into a home (but left open the possibility of exceptions). See *Lange v. California*, 594 U.S. ____ (2021).
 2. Adams, J. (1851). Novanglus papers. In C. F. Adams (Ed.), *The works of John Adams* (p. 106). Little, Brown.
 3. Neubauer, D. (2008). *America's courts and the criminal justice system* (9th ed., pp. 294–300). Wadsworth.
 4. *Draper v. United States*, 358 U.S. 307 (1959).
 5. *Illinois v. Gates*, 462 U.S. 213 (1983).
 6. *U.S. v. Sokolow*, 109 S.Ct. 1581 (1989).
 7. *People v. Defore*, 242 N.Y. 214, 150 N.E. 585 (1926).
 8. *Weeks v. United States*, 232 U.S. 383 (1914).
 9. *Mapp v. Ohio*, 367 U.S. 643 (1961).
 10. Ibid.
 11. *Utah v. Strieff*, 579 U.S. ____, 136 S.Ct. 2056 (2016).
 12. *Payton v. New York*, 445 U.S. 573 (1980).
 13. *United States v. Reed*, 935 F. 2d 641 (4th Cir.), cert. denied, 502 U.S. 960 (1991).
 14. *Lange v. California*, 594 U.S. ____ (2021).
 15. *Delaware v. Prouse*, 440 U.S. 648 (1979).
 16. *Michigan Department of State Police v. Sitz*, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990).
 17. *Pennsylvania v. Muniz*, 110 S.Ct. 2638, 110 L.Ed.2d 528 (1990).
 18. *Maryland v. Pringle*, 124 S.Ct. 795 (2004).
 19. *Illinois v. Lidster*, 124 S.Ct. 885 (2004).
 20. *Kentucky v. King*, 131 S.Ct. 1849 (2011).
 21. *California v. Greenwood*, 486 U.S. 35 (1988).
 22. *Florida v. Bostick*, 59 LW 4708 (June 20, 1991).
 23. *California v. Hodari D.*, 59 LW 4335 (April 23, 1991).
 24. *Chimel v. California*, 395 U.S. 752 (1969).
 25. *Maryland v. Buie*, 58 LW 4281 (1990).
 26. *Arizona v. Gant*, 07–542 (2009).
 27. *Maryland v. King*, 569 U.S. 12 (2013).
 28. *Riley v. California*, 573 U.S. 373 (2014).
 29. *Terry v. Ohio*, 319 U.S. 1 (1968).
 30. *Minnesota v. Dickerson*, 113 S.Ct. 2130 (1993).
 31. Bergner, D. (2014, April). Is stop and frisk worth it? *Atlantic Monthly*. <http://www.theatlantic.com/features/archive/2014/03/is-stop-and-frisk-worth-it/358644/>; see also Nation. (2012). The hunted and the hated. *YouTube*. <https://www.youtube.com/watch?v=7rWtDMPaRD8>
 32. Ibid.
 33. See MacDonald, J., Fagan, J., & Geller, A. (2016, June). The effects of local police surges on crime and arrests in New York City. *PLoS One*. <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0157223>
 34. *Maryland v. Wilson*, 117 S.Ct. 882 (1997).

35. *Missouri v. McNeely*, 569 U.S. ____ (2013).
36. *Mitchell v. Wisconsin*, 588 U.S. ____ (2019).
37. *Birchfield v. North Dakota*, 579 U.S. ____ (2016).
38. *Carroll v. United States*, 267 U.S. 132 (1925).
39. *Harris v. United States*, 390 U.S. 234 (1968).
40. *Florida v. Jimeno*, 59 LW 4471 (May 23, 1991).
41. *Wyoming v. Houghton*, 119 S.Ct. 1297 (1999).
42. *Illinois v. Caballes*, 543 U.S. 405 (2005); *Florida v. Harris*, 568 U.S. 237 (2013): In a unanimous decision, the Supreme Court gave police authority to use dogs to uncover illegal drugs at traffic stops, upholding a police Labrador retriever's search of a truck that uncovered methamphetamine ingredients inside.
43. *Rodriguez v. United States*, 135 S.Ct. 1609 (2015).
44. *U.S. v. Jones*, 565 U.S. ____, 132 S.Ct. 945 (2012).
45. *Byrd v. United States*, 584 U.S. ____ (2018).
46. Read excerpts from foreign constitutions at <https://www.constituteproject.org/search?lang=en&key=privacy>
47. *New York v. Class*, 54 LW 4178 (1986).
48. *Oliver v. United States*, 466 U.S. 170 (1984).
49. *California v. Ciraolo*, 476 U.S. 207 (1986).
50. *Collins v. Virginia*, 584 U.S. ____ (2018).
51. *Florida v. Jardines*, 569 U.S. ____, 133 S. Ct. 1409 (2013): Justice Antonin Scalia's opinion stated that "to find a visitor knocking on the door is routine (even if sometimes unwelcome); to spot that same visitor exploring the front path with a metal detector, or marching his bloodhound into the garden before saying hello and asking permission, would inspire most of us to—well, call the police." Scalia said using the dog was no different from using thermal imaging technology from afar to peer inside homes without a warrant.
52. *Bumper v. North Carolina*, 391 U.S. 543 (1968).
53. *Stoner v. California*, 376 U.S. 483 (1964).
54. *City of Los Angeles v. Patel*, 576 U.S. ____ (2015).
55. *Georgia v. Randolph*, 126 S.Ct. 1515 (2006).
56. *Fernandez v. California*, 571 U.S. ____ (2014).
57. *Katz v. United States*, 389 U.S. 347 (1967).
58. *Berger v. New York*, 388 U.S. 41 (1967).
59. *Lee v. United States*, 343 U.S. 747 (1952).
60. See Howell, K. (2017, November 27). The Fifth Amendment, decryption and biometric passcodes. *Lawfare*. <https://www.lawfareblog.com/fifth-amendment-decryption-and-biometric-passcodes#:~:text=For%20example%2C%20the%20Fifth%20Amendment,no%20testimonial%20or%20communicative%20nature>
61. *Miranda v. Arizona*, 384 U.S. 436 (1966).
62. *Edwards v. Arizona*, 451 U.S. 477 (1981).
63. *Arizona v. Roberson*, 486 U.S. 675 (1988).
64. *Berkemer v. McCarty*, 468 U.S. 420 (1984).
65. *Quarles v. New York*, 467 U.S. 649 (1984).
66. Goodman, A. (2013, April 22). How the media have misunderstood Dzhokhar Tsarnaev's *Miranda* rights. *The Atlantic*. <http://www.theatlantic.com/national/archive/2013/04/how-the-media-have-misunderstood-dzhokhar-tsarnaevs-i-miranda-i-rights/275189/>
67. *Michigan v. Mosley*, 423 U.S. 93 (1975).
68. *Colorado v. Spring*, 479 U.S. 564 (1987).
69. *Connecticut v. Barrett*, 479 U.S. 523 (1987).
70. *Duckworth v. Eagan*, 109 S.Ct. 2875 (1989).
71. *Berghuis v. Thompson*, 560 U.S. 370 (2010).
72. *Salinas v. Texas*, 133 S.Ct. 2174 (2013). In a narrow 5–4 decision, the Court concluded that the Fifth Amendment's privilege against self-incrimination does not extend to defendants who decide to remain silent during questioning. A witness (someone who is being questioned but is not yet in custody as a suspect) must explicitly claim that protection if he or she wants to guard against self-incrimination.
73. *U.S. v. Wade*, 388 U.S. 218 (1967).
74. *Kirby v. Illinois*, 406 U.S. 682 (1972).
75. *Foster v. California*, 394 U.S. 440 (1969).
76. Loftus, E. F., Doyle, J. M., & Dysert, J. (2008). *Eyewitness testimony: Civil & criminal* (4th ed.). Lexis Law; Loftus, E. F. (1979). The malleability of human memory. *American Scientist*, 67, 312–320; Wells, G. L., et al. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22(6), 603–647; Wells, G. L. (2006). Eyewitness identifications: Systemic reforms. (2006). *Wisconsin Law Review*, 615, 628–629.
77. *State v. Henderson*, 27 A.3d 872 (2011).
78. *Powell v. Alabama*, 287 U.S. 45 (1932).
79. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
80. *Argersinger v. Hamlin*, 407 U.S. 25 (1973).
81. *Luis v. United States*, 136 S.Ct. 1083 (2016).
82. *Escobedo v. Illinois*, 378 U.S. 478 (1964).

CHAPTER 9

1. Surrency, E. C. (1967). The courts in the American colonies. *American Journal of Legal History*, 11, 258.
2. Hall, K. (1989). *The magic mirror: Law in American history*. Oxford University Press.
3. Surrency, The courts in the American colonies, p. 258.
4. Adler, F., Mueller, G. O. W., & Laufer, W. S. (2006). *Criminal justice: An introduction* (pp. 325–326). McGraw-Hill.
5. Whicher, S., & Spiller, R. (Eds.). (1953). *The early lectures of Ralph Waldo Emerson* (p. 112). University of Pennsylvania Press.
6. *Tehan v. U.S. ex rel. Shott*, 382 U.S. 406 (1966), p. 416.
7. Abadinsky, H. (1999). *Law and justice: An introduction to the American legal system* (4th ed., p. 174). Nelson-Hall.
8. *Ibid.*, p. 170.

9. For the last compiled database on prisoner petitions, see U.S. Department of Justice. Table 5.65: Petitions Filed in U.S. District Courts by Federal and State Prisoners. *Sourcebook of Criminal Justice Statistics Online*. <https://www.albany.edu/sourcebook/pdf/t5652012.pdf>
10. Feeley, M. L., & Rubin, E. L. (1998). *Judicial policy making and the modern state: How the courts reformed America's prisons*. Cambridge University Press.
11. *Brown v. Plata*, 131 S.Ct. 1910 (2011).
12. Wasby, S. L. (1989). *The Supreme Court in the federal system* (3rd ed., p. 5). Nelson-Hall.
13. Abadinsky, *Law and Justice*, p. 171.
14. *Ibid.*, p. 166.
15. Spohn, C., & Hemmens, C. (2008). *Courts: A text/reader* (p. 10). SAGE.
16. National Center for State Courts, Conference of State Court Administrators, *Courts Statistics Project, CSP STAT Overview, Trial Court Case Load Review Incoming Trends 2012–2020*. <https://www.courtstatistics.org/csp-stat-nav-cards-first-row/csp-stat-overview>
17. Neubauer, D. W., & Fradella, H. F. (2019). *America's courts and the criminal justice system* (13th ed.). Cengage. <https://www.cengage.com/>
18. *Ibid.*
19. *Ibid.*
20. Nevada Appellate Courts. (2014). <http://nvcourts.gov/CourtOfAppeals.aspx>
21. West Virginia Judiciary. (n.d.). Intermediate court of appeals. <http://www.courtswv.gov/lower-courts/intermediate-court.html>
22. Schaufliker, R., LaFountain, R., Strickland, S., Holt, K., & Genthon, K. (2016). *Examining the work of state courts: An overview of 2015 state court caseloads*. National Center for State Courts.
23. Neubauer, D. W. (1992). *America's courts and the criminal justice system* (8th ed., p. 85). Brooks/Cole.
24. *Ibid.*
25. *Ibid.*, p. 87.
26. U.S. Courts. (2019). Federal judicial caseload statistics 2019. <https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2019>
27. Federal Judicial Center. (n.d.). Federal judicial history. <http://www.fjc.gov/history/home.nsf>
28. U.S. Courts. Federal Judicial Caseload Statistics 2019.
29. Federal Judicial Center. Federal judicial history.
30. Supreme Court of the United States. About the Court. <https://www.supremecourt.gov/about/about.aspx>
31. Neubauer, D. W. (2008). *America's courts and the criminal justice system* (9th ed., p. 63). Thomson Wadsworth.
32. Supreme Court of the United States. (n.d.). Instructions for admission to the bar. <http://www.supremecourtus.gov/bar/barinstructions.pdf>
33. See United States Courts. (n.d.). Supreme Court procedures. <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1>
34. *Ibid.*
35. Supreme Court of the United States. (n.d.). The Supreme Court at work. <https://www.supremecourt.gov/about/courtatwork.aspx>; also see, as examples of written opinions, Supreme Court of the United States. (n.d.). Opinions. <https://www.supremecourt.gov/opinions/opinions.aspx>
36. *Ibid.*; see the *Rules and Guidance*, generally, at https://www.supremecourt.gov/filingandrules/rules_guidance.aspx
37. The U.S. Supreme Court reversed the decision of the lower court (i.e., the circuit court), saying the lack of an instruction on causation by itself in this case was not a violation of due process rights. The Court also said, notably, that “a person who is aware of, and consciously disregards a risk, must foresee the ultimate harm involved.” See *Kibbe v. Henderson*, 534 F.2d 493 (1976). Kibbe’s adversary (the appellee) in this case, Henderson, was the superintendent at Auburn Correctional Facility in New York. The phrase “exhausting all possible state remedies” is a legal doctrine meaning that the state’s appeals courts are to be given the opportunity to correct any defects that occurred at trial before a party may pursue a case in federal court. This is basically the rule of comity, or courtesy—the federal courts defer to state courts to correct any defects prior to those claims being raised in a federal court. *Habeas corpus* (sometimes termed “the great writ”) is a Latin term for “you have the body,” and it is the inmate’s means of asking a court to grant a hearing to determine whether or not he or she is being held illegally.
38. Subramanian, R., Delaney, R., Roberts, S., & Fishman, N. (2015). *Incarceration's front door: The misuse of jail in America*. Vera Institute of Justice; Picchi, A. (2015, February 11). Are America's jails used to punish poor people? *CBS News*. <http://www.cbsnews.com/news/how-jails-are-warehousing-those-too-poor-to-make-bail/>
39. Minton, T. D., & Zeng, Z. (2021, December). Jail inmates in 2020. *Bureau of Justice Statistics*. <https://bjs.ojp.gov/content/pub/pdf/ji20st.pdf>
40. Solomon, J., & Lyons, B. J. (2022, January 2). New data shows nearly 4 percent of people out due to bail changes were rearrested for violent felonies. *Times Union*. <https://www.timesunion.com/state/article/New-data-shows-less-than-4-of-people-out-on-bail-16736295.php>
41. American Bar Association. (2019, September 9). How courts work. https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/court_role/
42. Buchanan, L., et al. (2014, November 25). What happened in Ferguson? *The New York Times*. <http://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html>
43. Associated Press. (2021, August 5). AG: Breonna Taylor grand jury “ultimately decided” charges. *U.S. News & World Report*. <https://www.usnews.com/news/us/articles/2021-08-05/ag-breonna-taylor-grand-jury-ultimately-decided-charges>
44. For more information, search “grand jury” at <https://www.americanbar.org/>
45. Specter, A. (1967). Book review. *Yale Law Journal*, 76(5), 606–607.
46. Nisbet, J. (1901). *Burma under British Rule—and before* (Vol. I., p. 177). Archibald Constable.

47. Daniels, C. L., & Stevans, C. M. (Eds.). (1903). *Encyclopedia of superstitions, folklore, and the occult sciences of the world* (Vol. III., p. 1243). J. H. Yewdale.
48. Leatherdale, D. (2019, February 9). Trial by ordeal: When fire and water determined guilt. *BBC News*. <https://www.bbc.com/news/uk-45799443>
49. *Williams v. Florida*, 399 U.S. 78, 86 (1970).
50. *Apodaca v. Oregon*, 406 U.S. 404 (1972).
51. Vick and his attorneys bargained with federal prosecutors to avoid a trial. During this time, Vick tested positive for marijuana, in violation of his bail conditions, so the federal judge ordered stricter home-confinement conditions. Vick ultimately pleaded guilty to a variety of charges and was sentenced to, among other penalties, 21 months in federal prison at Leavenworth, Kansas, and extensive community service in the interest of stopping animal cruelty. While Vick was serving time at Leavenworth, Virginia authorities moved forward with their case, using Vick's guilty pleas in the federal case to bolster the state's evidence. Again, Vick pleaded guilty and struck a bargain for a suspended sentence conditioned on the successful serving of his federal sentence. Vick was released from prison in 2009 and ultimately returned to play in the NFL while devoting significant time to speaking out against animal cruelty.
52. See *Brady v. Maryland*, 373 U.S. 83 (1963).
53. Neubauer, D. W. (1992). *America's courts and the criminal justice system* (9th ed., p. 263). Brooks/Cole.
54. Haskins, P. A. (2019, September 26). Problem-solving courts: Fighting crime by treating the offender. *National Institute of Justice Journal*. <https://nij.ojp.gov/topics/articles/problem-solving-courts-fighting-crime-treating-offender>
55. Council of State Governments Justice Center. (n.d.). Mental health courts. <https://csgjusticecenter.org/projects/mental-health-courts/>
56. Marlowe, D. B., Hardin, C. D., & Fox, C. L. (2016, June). Painting the picture: A national report on drug courts and other problem-solving court programs in the United States. *National Drug Court Institute*. <https://www.ndci.org/wp-content/uploads/2016/05/Painting-the-Current-Picture-2016.pdf>
57. *Ibid.*; see also Haskins, Problem-solving courts: Fighting crime by treating the offender.
58. See Fyfe, T. A. (1910). *Charles Dickens and the law* (pp. 28–29). Chapman and Hall.
59. Dickens, C. (1971). *Bleak house*. Penguin Books. (First published in 1853)
60. Shakespeare, W. *Hamlet*, Act 3, Scene 1.
61. *Strunk v. U.S.*, 412 U.S. 434 (1973).
62. Speedy Trial Act of 1974, 18 U.S.C.S. §§ 3161–3174 (as amended, 1979).
63. *Barker v. Wingo*, 407 U.S. 514 (1972).
64. *Ibid.*
65. *Ibid.*, p. 522.
66. *Doggett v. United States*, 505 U.S. 647 (1992).
67. American Prosecutors Research Institute. (2005, May). *Basic trial techniques for prosecutors*. https://ndaa.org/wp-content/uploads/basic_trial_techniques_05.pdf
68. Justia. (2021, October). Criminal appeals. <https://www.justia.com/criminal/procedure/criminal-appeals/>
69. *Douglas v. California*, 372 U.S. 353 (1963).
70. *Ross v. Moffitt*, 417 U.S. 600 (1974).
71. Federal Judicial Center. (2015). *Annual report*. <https://www.fjc.gov/sites/default/files/2016/Annual%20Report%202015.pdf>
72. *Ibid.*, p. 7.
73. Brown, D. (2015, May 29). San Diego county prosecutors use app to present evidence. *KPBS Public Broadcasting*. <http://www.kpbs.org/news/2015/may/29/san-diego-county-prosecutors-using-app-present-evidence/>
74. Dixon, J. H. B. Jr. (2017, November 1). The basics of a technology-enhanced classroom. *American Bar Association*. https://www.americanbar.org/groups/judicial/publications/judges_journal/2017/fall/basics-technologyenhanced-courtroom/
75. Legg, M., & Song, A. (2021). The courts, the remote hearing and the pandemic: From action to reflection. *University of New South Wales Law Journal*, 44(1), 126–166. <http://classic.austlii.edu.au/au/journals/UNSWLawJL/2021/6.html>
76. National Center for State Courts. *Conducting fair and just remote hearings: A bench guide for judges*. https://www.ncsc.org/__data/assets/pdf_file/0025/51784/Remote-Hearing-Bench-Guide.pdf
77. National Judicial College. (n.d.). *The model courtroom*. <https://www.judges.org/about/>

CHAPTER 10

1. Berens, M., & Shiffman, J. (2020, June 30). Thousands of U.S. judges who broke laws or oaths remained on the bench. *Reuters*. <https://www.reuters.com/investigates/special-report/usa-judges-misconduct/>
2. *Ibid.*
3. Brakel, S. J., & Brooks, A. D. (2001). *Law and psychiatry in the criminal justice system* (p. 130). William S. Hein.
4. Quoted in Landy, D., & Aronson, E. (1969). The influence of the character of the criminal and his victims on the decisions of simulated jurors. *Journal of Experimental Social Psychology*, 5(2), 141–142.
5. Blumberg, A. (1967). *Criminal justice* (p. 120). Quadrangle Books.
6. See, for example, Pennsylvanians for Modern Courts. (2019, September 15). *No system for choosing judges is perfect, but a hybrid system would be better*. <https://www.pmconline.org/blog/no-system-choosing-judges-perfect-hybrid-system-would-be-better>
7. U.S. Department of Justice, Bureau of Justice Statistics. (2006, October). *State court organization 2004* (p. 23).
8. American Judicature Society. (2008). *Judicial selection in the states: How it works, why it matters* (p. 4). Author.
9. *Ibid.*
10. Podgers, J. (2009, May 9). O'Connor on judicial elections: "They're awful. I hate them." *ABA Journal*. http://www.abajournal.com/news/oconnor_chemerinsky_sound_warnings_at_a_ba_conference_about_the_dangers_of_s/
11. *Ibid.*
12. O'Connor says judges shouldn't be elected. (2007, November 8). *Law*.

- com. <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1194429842107>
13. Knowlton, N. A. (2020, August 27). Trusting the public's perception of our justice system. *Institute for the Advancement of the American Legal System*. <https://iaals.du.edu/blog/trusting-public-s-perception-our-justice-system>
 14. Pew Research Center. (2022, February 2). Public's views of Supreme Court turned more negative before news of Breyer's retirement. <https://www.pewresearch.org/politics/2022/02/02/publics-views-of-supreme-court-turned-more-negative-before-news-of-breyers-retirement/>
 15. Jong, S. (2014, September 26). Top 5 list of real-life judicial misconduct. *Ballotpedia*. https://ballotpedia.org/Top_5_List_of_Real-Life_Judicial_Misconduct
 16. Neil, M. (2009, March 3). Top Court hears judicial influence case, leans toward stricter recusal standard. *ABA Journal*. http://www.abajournal.com/news/top_court_hears_judicial_influence_case_leans_toward_stricter_recusal_stand
 17. *Caperton v. A. T.* (2009). *Massey coal co., inc.*, 556 U.S. 868.
 18. Cranson, J. (2009, March 3). The price of justice: High court wrestles with a case that should spark discussion in Michigan. *The Grand Rapids Press*. http://blog.mlive.com/talkingpolitics/2009/03/the_price_of_justice_high_cour.htmls
 19. *Williams v. Pennsylvania*, 136 S.Ct. 28 (2015). In a 5-3 ruling, the U.S. Supreme Court ruled that Judge Castille should have recused himself from the case. Justice Anthony Kennedy wrote in the majority opinion that "where a judge has had an earlier significant, personal involvement as a prosecutor in a critical decision in the defendant's case, the risk of actual bias in the judicial proceeding rises to an unconstitutional level." The Court ruled that Castille's failure to recuse himself violated the defendant's Fourteenth Amendment due process protections.
 20. Bannon, A., Lisk, C., & Hardin, P. (2017). Who pays for judicial races. *Brennan Center for Justice*. <https://www.brennancenter.org/publication/politics-judicial-elections>
 21. Ibid.
 22. Handcock, P. (2022, April 12). If signed, bill could influence upcoming Illinois Supreme Court elections. *Capitol News Illinois*. <https://www.capitolnewsillinois.com/NEWS/session-recap-lawmakers-pass-limits-on-campaign-contributions-in-judicial-races>
 23. Blumberg, *Criminal Justice*, p. 120.
 24. Russell, R. W., & Howard, R. (1977). Whitcomb. In *Judicial administration: Text and readings* (p. 370). Prentice Hall.
 25. Ibid., p. 372.
 26. Ibid.
 27. Ibid.
 28. Ibid., p. 373.
 29. Batlitch, W. A. (2003, Fall). Reflections on the art and craft of judging. *The Judges Journal*, 43(4), 7-8.
 30. Patterson, C. E. (2003, Fall). The good judge: A trial lawyer's perspective. *The Judges Journal*, 43(4), 14-15.
 31. Russell, K. N., Edwards, C. P., Miller, M. K., & Jackson, B. K. (2021). Is civility dead? Judges' perceptions of incivility in the courtroom. *Juvenile & Family Court Journal*, 72(4), 57-73.
 32. See, for example, Harris, A. K. (2002). The professionalism crisis—The "Z" words and other Rambo tactics: The conference of chief justices' solution, 53 S.C. L. Rev. 549, 589.
 33. *In re First City Bancorp of Tex., Inc.*, 282 F.3d 864 (5th Cir. 2002).
 34. Greenstein, M. N. (2003, Fall). The craft of ethics. *The Judges Journal*, 43(4), 42.
 35. Tasker, T. (2003, Fall). Sticks and stones: Judicial handling of invective in advocacy. *The Judges Journal*, 43(4), 17-18.
 36. Fitzpatrick, C. T. (2005, Winter). Building a better bench: Informally addressing instances of judicial misconduct. *The Judges Journal*, 45(2), 16-20.
 37. Ibid.
 38. U.S. Courts. Guide to Judiciary Policy. https://www.uscourts.gov/sites/default/files/vol02a-ch02_0.pdf
 39. Jacobowitz, J. L., & Browning, J. G. (2017). *Legal ethics and social media: A practitioner's handbook*. American Bar Association.
 40. Gray, C. (2019, Summer). Stumbling online. *The Judges Journal*, 58(3), 25-27.
 41. Southern Poverty Law Center. (2003). Are there limits to prosecutorial discretion? <https://www.splcenter.org/fighting-hate/intelligence-report/2003/are-there-limits-prosecutorial-discretion>
 42. *Berger v. United States*, 295 U.S. 78 (1935).
 43. *Connick v. Thompson*, 563 U.S. 51 (2011).
 44. Balko, R. (2013, August 1). The untouchables: America's misbehaving prosecutors, and the system that protects them. *Huffington Post*. http://www.huffingtonpost.com/2013/08/01/prosecutorial-misconduct-new-orleans-louisiana_n_3529891.html
 45. *Van De Kamp v. Goldstein*, 555 U.S. 335 (2009), quoting *Gregoire v. Biddle*, 177 F. 2d 579, 581 (2 Cir. 1949).
 46. *Maine v. Moulton*, 474 U.S. 159 (1985).
 47. Legal Information Institute. Right to counsel: Doctrine and practice. <https://www.law.cornell.edu/constitution-conan/amendment-6/right-to-counsel-doctrine-and-practice>
 48. *Strickland v. Washington*, 104 S.Ct. 3562 (1984).
 49. See California Innocence Project. (n.d.). Ineffective assistance of counsel. <http://californiainnocenceproject.org/issues-we-face/ineffective-assistance-of-counsel>
 50. Ibid.; also see *Strickland v. Washington*, 466 U.S. 668 (1984).
 51. Mintz, W. A. (1980, November 24). Lawyer wouldn't go to "sleazy bar," client wins freedom from life term. *National Law Journal*, p. 7.
 52. Gramlich, J.. (2019, June 11). Only 2% of federal criminal defendants go to trial, and most who do are found guilty. *Pew Research Center*. <https://www.pewresearch.org/fact-tank/2019/06/11/only-2-of-federal-criminal-defendants-go-to-trial-and-most-who-do-are-found-guilty/>
 53. See, for example, Justia. (2021, October). Common criminal defenses. <https://www.justia.com/criminal/defenses/>
 54. *Griffin v. Illinois*, 351 U.S. 12 (1956).

55. For more information about defense attorneys in general and indigent services specifically, see Spohn, C., & Hemmens, C. (2012). *Courts: A text/reader* (2nd ed., pp. 218–223). SAGE.
56. Eisenstein, J., & Jacob, H. (1977). *Felony justice: An organizational analysis of criminal courts*. Little, Brown.
57. U.S. Department of Labor. (2022). Court reporters. *Occupational outlook handbook, legal*. <https://www.bls.gov/ooh/legal/court-reporters.htm>
58. *Massachusetts v. Leno*, 415 Mass. 835, 616 N.E.2d 453 (1993).
59. Katz, L. (2022). Excuse: Duress—the nature of the threat, the nature of the crime, the mistaken defendant, the semiculpa defendant—superior orders: Husbands and wives. *Law library: American law and legal information—Crime and criminal law*. <http://law.jrank.org/pages/1128/Excuse-Duress.html>
60. *Spakes v. State*, 913 S.W.2d 597 (Tex. Crim. App. 1996).
61. *People v. Luther*, 394 Mich. 619, 232 N.W.2d 184 (1975); Bedi, M. (2011, Spring). Excusing behavior: Reclassifying the federal common law defenses of duress and necessity relying on the victim's role. *Journal of Criminal Law and Criminology*, 101(2), 575–632.
62. *Sherman v. U.S.*, 356 U.S. 369 (1958).
63. *U.S. v. Russell*, 411 U.S. 423 (1973).
64. PBS. Biography: John Hinckley Jr. *American Experience*. <http://www.pbs.org/wgbh/americanexperience/>
65. Gates, D. (1986, October 13). Everybody has scars. *Newsweek*, p. 10; also see Man given 5-to-15-year term in model's slashing. (1987, May 12). *The New York Times*. <http://www.nytimes.com/1987/05/12/nyregion/man-given-5-to-15-year-term-in-model-s-slashing.html>
66. Pogash, C. (2003, November 23). Myth of the "Twinkie defense": The verdict in the Dan White case wasn't based on his ingestion of junk food. *San Francisco Chronicle*. <http://www.sfgate.com/health/article/Myth-of-the-Twinkie-defense-The-verdict-in-2511152.php>
67. Perlin, M. (1994). *The jurisprudence of the insanity defense* [p. 108]. Carolina Academic Press.
68. *M'Naghten's Case*, 8 Eng. Rep. 718 (H.L. 1843).
69. *Parsons v. State*, 2 So. 854 (Ala. 1887).
70. Generally, Hooper, J. F. (2002, April 1). Does the insanity defense have a legitimate role? *Psychiatric Times*, 19(4). <https://www.psychiatrictimes.com/view/does-insanity-defense-have-legitimate-role>
71. Johnson, D. (1992, February 16). Milwaukee jury says Dahmer was sane. *The New York Times*. <http://www.nytimes.com/1992/02/16/us/milwaukee-jury-says-dahmer-was-sane.html>
72. PBS. Other notorious insanity cases. *Frontline*. <http://www.pbs.org/wgbh/pages/frontline/shows/crime/trial/other.html>
73. Ibid.
74. McCoye, T. (2015, February 25). Trial of "American Sniper" Chris Kyle's killer: Why the insanity defense failed. *The Washington Post*. <http://www.washingtonpost.com/news/morning-mix/wp/2015/02/25/trial-of-american-sniper-chris-kyles-killer-why-the-insanity-defense-failed/>
75. This is the Florida case of Marissa Alexander from 2010. Her defense failed because she took the time to go to the garage and get the gun, which the prosecution successfully argued meant she also had time to call the police and escape the "immediate" danger she feared. The state argued that she acted/fired out of anger and not fear, imperiling both her husband and children. She was convicted and sentenced to 20 years in prison (under a mandatory sentencing scheme triggered in part by her use of the gun). In the wake of the George Zimmerman acquittal, Alexander's case garnered renewed attention. In 2013, she won a new trial based on an error at her original trial: The burden of proving the self-defense issue had been improperly shifted to Alexander and not to the prosecution. She was released from prison in November 2013 and ordered to remain on house arrest. The Florida prosecutor—the same prosecutor from the Zimmerman trial—vowed she would retry Alexander and seek 60 years (the maximum sentence allowed on such a retrial). In November 2014, Alexander pleaded guilty in exchange for time served to avoid retrial and the potential 60-year sentence. She was sentenced in January 2015 to 2 years of house arrest. See Carmon, I. (2015, January 27). Marissa Alexander released from jail. *MSNBC*. <http://www.msnbc.com/msnbc/marissa-alexander-may-be-released>

CHAPTER 11

1. Bradbury, S. (2021, December 13). Trucker sentenced to 110 years in prison for fiery I-70 crash that killed 4. *The Denver Post*. <https://www.denverpost.com/2021/12/13/i-70-crash-trucker-sentenced-rogel-aguilera-mederos/#:~:text=Rogel%20Aguilera%2DMederos%2C%2026%2C,people%20and%20wounded%20six%20others>
2. BBC News. (2021, December 31). Rogel Aguilera-Mederos: Colorado truck driver's sentence cut by 100 years. <https://www.bbc.com/news/world-us-canada-59839723>
3. Cullen, F. T., & Gendreau, P. (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. *Criminal Justice*, p. 111. https://www.ncjrs.gov/criminal_justice2000/vol_3/03d.pdf
4. Welsh, B. C. (2004, September). Monetary costs and benefits of correctional treatment programs: Implications for offender reentry. *Federal Probation*, p. 12. <https://www.uscourts.gov/federal-probation-journal/2004/09/monetary-costs-and-benefits-correctional-treatment-programs>
5. Ibid., pp. 9–12.
6. Cohen, J. (1983). *Incapacitating criminals: Recent research findings I* (p. 2). National Institute of Justice, Research in Brief.
7. Bureau of Prisons. (2021, September 1). Annual determination of average cost of incarceration fee (COIF). *Federal Register*. [https://www.federalregister.gov/documents/2021/09/01/2021-18800/annual-determination-of-average-cost-of-incarceration-fee-coif#:~:text=Based%20on%20FY%202020%20data,%2435%2C663%20\(2497.44%20per%20day\)](https://www.federalregister.gov/documents/2021/09/01/2021-18800/annual-determination-of-average-cost-of-incarceration-fee-coif#:~:text=Based%20on%20FY%202020%20data,%2435%2C663%20(2497.44%20per%20day))
8. California's annual costs to incarcerate an inmate in prison. (2021–2022). *Legislative Analyst's Office*. https://lao.ca.gov/policyareas/cj/6_cj_inmatecost

9. Dilulio, J. J. Jr. (1996, January 16). Prisons are a bargain, by any measure. *The New York Times*, p. A17.
10. The discussion of the corrections models is adapted from Clear, T. R., Cole, G. F., & Reisig, M. D. (2009). *American corrections* (8th ed., pp. 40–64). Thomson Wadsworth; the discussion of the accompanying prison design and operation is adapted from Schoenherr, S. E. *Prison reforms in American history*. <http://sunnycv.com/steve/soc/prison.html>
11. Quotes taken from the U.S. Bureau of Prisons. (1949). *Handbook of correctional institution design and construction*. Author.
12. Amnesty International Global Report. (2021). Death sentences and executions 2020. <https://www.amnesty.org/en/documents/act50/3760/2021/en/>
13. Ibid.
14. Saudi Arabian International Schools. (1992, Spring). *An introduction to the Kingdom of Saudi Arabia* (p. 11); Reuters. (1994, June 26). U.S. student tells of pain of his caning in Singapore. *The New York Times*. <http://www.nytimes.com/1994/06/26/us/us-student-tells-of-pain-of-his-caning-in-singapore.html>
15. Hyland, S. S. (2019, November 7). Justice expenditure and employment extracts, 2016. *Bureau of Justice Statistics*. <https://www.bjs.gov/index.cfm/dataonline/content/index.cfm?ty=pbdetail&iid=6728>
16. World Population Review. (2022). Prison population by state 2022. <https://worldpopulationreview.com/state-rankings/prison-population-by-state>
17. Adapted from U.S. Department of Justice, National Institute of Corrections, and Association of Paroling Authorities International. (2003, April). *A handbook for New Parole Board Members*, p. 3. <https://www.shsu.edu/~apai/documents/CEPPParoleHandbook.pdf>
18. Quoted by Sheldon G. Glueck in his "Foreword" to Barry, J. V. (1958). *Alexander Maconochie of Norfolk Island*. Oxford University Press.
19. Allenbaugh, M. (2005, January 14). The Supreme Court's new blockbuster U.S. sentencing guidelines decision. <https://supreme.findlaw.com/legal-commentary/the-supreme-courts-new-blockbuster-us-sentencing-guidelines-decision.html>
20. At 18 U.S.C. Secs. 3551–3626 and 28 U.S.C. Secs. 991–998 (October 12, 1984).
21. Allenbaugh, The Supreme Court's new blockbuster U.S. sentencing guidelines decision.
22. Seghetti, L. M., & Smith, A. M. (2007, June 30). *Federal sentencing guidelines: Background, legal analysis, and policy options*. Congressional Research Service Report for Congress. <http://www.fas.org/srg/crs/misc/RL32766.pdf>
23. *Blakely v. Washington*, 542 U.S. (2004).
24. *United States v. Booker*, 543 U.S. 125 (2005).
25. Allenbaugh, The Supreme Court's new blockbuster U.S. sentencing guidelines decision.
26. *Gall v. United States*, 552 U.S. 38 (2007).
27. *Kimbrough v. United States*, 552 U.S. 85 (2007).
28. *Beckles v. United States*, 580 U.S. ____ (2017).
29. Washington State Caseload Forecast Council. (2020). *2020 Washington state adult sentencing guidelines manual*. https://www.cfc.wa.gov/PublicationSentencing/SentencingManual/Adult_Sentencing_Manual_2020.pdf.
30. National Victim Center. (1991). America speaks out: Citizen's attitudes about victims' rights and violence, executive summary. https://www.ncjrs.gov/ovc_archives/reports/impact/impact.htm
31. *Payne v. Tennessee*, 501 U.S. 808 (1991).
32. *Snyder v. Massachusetts*, 291 U.S. 97 (1934), at 122.
33. *Bosse v. Oklahoma*, 580 U.S. ____ (2016).
34. Hruska, J. (2018, May 3). Victims rights' proposals like Marsy's Law undermine due process. *American Civil Liberties Union*. <https://www.aclu.org/blog/criminal-law-reform/victims-rights-proposals-marsy-law-undermine-due-process>
35. Wilson, J. Q. (1985). *Thinking about crime* (p. 260). Vintage Books.
36. Mocan, H. N., & Gittings, R. H. (2003, October). Getting off death row: Commuted sentences and the deterrent effect of capital punishment. *Journal of Law and Economics*, 46, 453–478.
37. Dezhbakhsh, H., Rubin, P. H., & Shepherd, J. M. (2003). Does capital punishment have a deterrent effect? New evidence from postmoratorium panel data. *American Law and Economics Review*, 5(2), 344–376.
38. Zimmerman, P. R. (2004, May). State executions, deterrence, and the incidence of murder. *Journal of Applied Economics*, 7(1), 163–193.
39. Zimmerman, P. R. (2006, October). Estimates of the deterrent effect of alternative execution methods in the United States: 1978–2000. *American Journal of Economics and Sociology*, 65(4), 909–941.
40. Guis, M. (Fall 2020). Using the synthetic control method to determine the effects of the death penalty on state-level murder rates. *Justice Policy Journal*, 17(2), 1–10.
41. Berk, R. (2005). New claims about executions and general deterrence: Déjà vu all over again? *Journal of Empirical Legal Studies*, 2, 303–330.
42. Fagan, J. (2006). Death and deterrence redux: Science, law and causal reasoning on capital punishment. *Ohio State Journal of Criminal Law*, 4, 255–320.
43. Parker, B. (2021, September). Death penalty statutes and murder rates: Evidence from synthetic controls. *Journal of Empirical Legal Studies*, 18(3), 488–533.
44. Muramatsu, K., Johnson, D. T., & Yano, K. (2018). The death penalty and homicide deterrence in Japan. *Punishment and Society*, 20(4), 432–457.
45. Quoted in Amnesty International. (n.d.). Death penalty and race. <https://www.amnestyusa.org/issues/death-penalty/death-penalty-facts/death-penalty-and-race/>
46. Ibid.
47. Ibid.
48. *Furman v. Georgia*, 408 U.S. 238 (1972).
49. *Gregg v. Georgia*, 428 U.S. 153 (1976).
50. *Roper v. Simmons*, 543 U.S. 551 (2005).
51. *Ford v. Wainwright*, 477 U.S. 399 (1986).

52. *Kennedy v. Louisiana*, 554 U.S. 407 (2008).
 53. *Strickland v. Washington*, 466 U.S. 668 (1984).
 54. *Witherspoon v. Illinois*, 391 U.S. 510 (1968).
 55. *Baze v. Rees*, 553 U.S. 35 (2008).
 56. *Hill v. Florida*, No. SC06–2 (2006).
 57. Death Penalty Information Center. (2022, April 28). U.S. Supreme Court decisions: 2021–2022 term. <https://deathpenaltyinfo.org/facts-and-research/united-states-supreme-court/case-updates-by-supreme-court-term>
 58. Death Penalty Information Center. (2022). Innocence. <https://deathpenaltyinfo.org/policy-issues/innocence>
 59. Death Penalty Information Center (2022, May). Facts about the death penalty. <https://files.deathpenaltyinfo.org/legacy/documents/FactSheet.pdf>
 60. Death Penalty Information Center. (2021). State by state. <https://files.deathpenaltyinfo.org/legacy/documents/FactSheet.pdf>
 61. *Atkins v. Virginia*, 536 U.S. 304 (2002).
 62. *Ring v. Arizona*, 536 U.S. 584 (2002).
 63. *Roper v. Simmons*, 125 S.Ct. 1183 (2005).
 64. Barrett, D. (2019, July 25). Justice department plans to restart capital punishment after long hiatus. *The Washington Post*. https://www.washingtonpost.com/national-security/justice-department-plans-to-restart-capital-punishment-after-long-hiatus/2019/07/25/f2cc6402-aee5-11e9-bc5c-e73b603e7f38_story.html
 65. Death Penalty Information Center. (2021). Executions under the federal death penalty. <https://deathpenaltyinfo.org/state-and-federal-info/federal-death-penalty/executions-under-the-federal-death-penalty>
 66. U.S. Department of Justice. (2019, July 25). Federal government to resume capital punishment after nearly two decade lapse. *Justice News*. <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>
 67. Walsh, J. (2021, July 1). Biden administration orders halt on federal executions after surge under trump. *Forbes*. <https://www.forbes.com/sites/joewalsh/2021/07/01/biden-administration-orders-halt-on-federal-executions-after-surge-under-trump/?sh=29cca8f16e63>
 68. Adapted from *Nevada Revised Statutes* 200.033.
 69. Adapted from *Nevada Revised Statutes* 200.035.
 70. Justia. (2021, October). Appealing a conviction. <http://www.justia.com/criminal/criminal-appeals/>.
 71. *Douglas v. California*, 372 U.S. 353 (1963).
 72. *Griffin v. Illinois*, 351 U.S. 12 (1956).
 73. *Ross v. Moffitt*, 417 U.S. 600 (1974).
- ## CHAPTER 12
1. Burke, M. (2020, October 16). Black man serving life sentence for stealing hedge clippers granted parole. *NBC News*. <https://www.nbcnews.com/news/us-news/black-man-serving-life-sentence-stealing-hedge-clippers-granted-parole-n1243757>
 2. See, generally, UN Office on Drugs and Crime. (n.d.). Why promote prison reform? <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html>; also see Kim, S. M., & Gearan, A. (2018, August 30). Jared Kushner ramps up push for criminal justice reform. *The Washington Post*. https://www.washingtonpost.com/politics/jared-kushner-ramps-up-push-for-criminal-justice-reform/2018/08/30/449e2d02-acb1-11e8-8f4b-aee063e14538_story.html
 3. Goffman, E. (1961). *Asylums* (p. 5). Anchor Books.
 4. *Ibid.*, p. 6.
 5. See, for example, Katz, D. (2012, December 10). What's the difference between jail and prison? *FindLaw*. <http://blogs.findlaw.com/blotter/2012/12/whats-the-difference-between-jail-and-prison.html>
 6. Bureau of Justice Statistics. (2020, August). *Correctional populations in the United States, 2017–2018* (pp. 1–2). <https://bjs.ojp.gov/content/pub/pdf/cpus1718.pdf>
 7. *Ibid.*, p. 16.
 8. Death Penalty Information Center. (2021, April 1). Death row. <https://deathpenaltyinfo.org/death-row/overview>
 9. See Bureau of Justice Statistics. (2021, July). Justice expenditures and employment in the United States, 2017. <https://bjs.ojp.gov/library/publications/justice-expenditures-and-employment-united-states-2017>; also see U.S. Department of Justice. (n.d.). *Federal prison system (BOP)* (p. 2). <https://www.justice.gov/jmd/page/file/1142606/download>
 10. See Bureau of Labor Statistics. (2021, September 8). Correctional officers and bailiffs. <https://www.bls.gov/ooh/protective-service/correctional-officers.htm>
 11. Gramlich, J. (2019, January 3). 5 facts about crime in the U.S. *Pew Research Center*. <https://www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s/>
 12. Vera Institute of Justice. (January 27, 2021). Local jail populations in the U.S. on the rise again, state prison population declines level off, as COVID spreads throughout the prison system. <https://www.vera.org/newsroom/local-jail-populations-in-the-u-s-on-the-rise-again-state-prison-population-declines-level-off-as-covid-spreads-throughout-the-prison-system>
 13. Human Rights Watch. (n.d.). Averting an imminent catastrophe: Recommendations to US local, state and federal officials to Covid-19 in jails and prisons. https://www.hrw.org/sites/default/files/supporting_resources/c19_detention_finalreport_43020.pdf
 14. Seiter, R. P. (2002). *Correctional administration: Integrating theory and practice* (p. 11). Prentice Hall.
 15. See National Institute of Justice. (n.d.). Recidivism. <https://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx>
 16. Bureau of Justice Statistics. (2018, May). *2018 update on prisoner recidivism: A 9-year follow-up period (2005–2014)*. <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>
 17. See Recidivism: What it is and how to prevent it. (n.d.). *Florida Tech*. <http://www.floridatechonline.com/blo>

- g/criminal-justice/recidivism-what-it-is-and-how-to-prevent-it/
18. Zimring, F. E., & Hawkins, G. J. (1973). *Deterrence: The legal threat in crime control*. University of Chicago Press.
 19. Petersilia, J. (1990, March). When probation becomes more dreaded than prison. *Federal Probation*, 54, 27.
 20. Ibid.
 21. Ibid.
 22. Ibid., p. 25.
 23. Ibid.
 24. Levinson, R. B. (2006). Classification: The cornerstone of corrections. In P. M. Carlson & J. S. Garrett (Eds.), *Prison and jail administration: Practice and theory* (pp. 261–267). Jones and Bartlett.
 25. Ibid., p. 262.
 26. Ibid., pp. 262–263.
 27. Austin, J., & Hardyman, P. L. (2004, July). *Objective prison classification: A guide for correctional agencies*. National Institute of Corrections; also see Buchanan, R. (1986). National evaluation of objective prison classification systems: The current state of the art. *Crime & Delinquency*, 32(3), 272–290.
 28. Ibid., p. 192.
 29. Inciardi, J. A. (2001). *Criminal justice* (7th ed., p. 454). Harcourt Brace.
 30. Ibid., p. 194.
 31. U.S. Bureau of Prisons. (1977). *Unit management manual* (p. 6). Author.
 32. Seiter, *Correctional administration*, p. 196.
 33. See, generally, Federal Bureau of Prisons. (n.d.). Population statistics. https://www.bop.gov/mobile/about/population_statistics.jsp; also see *ibid.* Our locations. <https://www.bop.gov/locations/list.jsp>
 34. Ibid. Statistics. https://www.bop.gov/about/statistics/population_statistics.jsp
 35. Ibid. Our locations. <https://www.bop.gov/locations/list.jsp>
 36. See Public Law 115–391.
 37. For more information, see Federal Bureau of Prisons. (n.d.). An overview of the First Step Act. <https://www.bop.gov/inmates/fsa/overview.jsp>
 38. Gramlich, J. (2021, February 17). Under trump, the federal prison population continued its recent decline. *Pew Research Center*. <https://www.pewresearch.org/fact-tank/2021/02/17/under-trump-the-federal-prison-population-continued-its-recent-decline/>
 39. *Barber v. Thomas*, No. 09–5201 (9th Cir., 2010); also see U.S. Department of Justice, United States Parole Commission. (n.d.). *History of the Federal Parole System*. <http://www.usdoj.gov/uspc/history.pdf>
 40. Sullivan, L. (2006, July 26). Timeline: Solitary confinement in U.S. prisons. *NPR*. <http://www.npr.org/templates/story/story.php?storyId=5579901>
 41. Amnesty International. (2017). Entombed: Isolation in the US federal prison system. <http://www.amnestyusa.org/research/reports/entombed-isolation-in-the-us-federal-prison-system>
 42. May, A. (2019, February 14). ‘El Chapo’ heading to supermax prison? Who else is inside the Hellish ‘Alcatraz of the Rockies.’ *USA Today*. <https://www.usatoday.com/story/news/nation/2019/02/14/el-chapo-supermax-prison-joaquin-guzman-may-face/2868219002/>
 43. Frieden, T. (2007, September 14). Reporters get first look inside mysterious supermax prison. *CNN*. <http://www.cnn.com/2007/US/09/13/supermax.btsc/index.html?s=PM:US>
 44. Haney, C. (2003, January). Mental health issues in long-term solitary and ‘supermax’ confinement. *Crime & Delinquency*, 49(1), 124–156.
 45. Ibid.
 46. Pizarro, J., & Stenius, V. M. K. (2004, June). Supermax prisons: Their rise, current practices, and effect on inmates. *The Prison Journal*, 84(2), 248–264.
 47. Ibid., p. 260.
 48. *Madrid v. Gomez*, 889 F. Supp. 1146 (1995), at p. 1229.
 49. *Jones-El v. Berge*, 374 F.3d 541 (7th Cir. 2004), at p. 1118.
 50. Nossiter, A. (2021, February 27). ‘I wake up and scream’: Secret Taliban prisons terrorize thousands. *The New York Times*. <https://www.nytimes.com/2021/02/27/world/asia/afghanistan-taliban-prison.html>
 51. Descriptions of the above prisons adapted from the list: The world’s most notorious prisons. (n.d.). *Foreign Policy*. <https://foreignpolicy.com/2009/01/21/the-list-the-worlds-most-notorious-prisons/>
 52. Zoukis, C. (2017, September 6). Not the worst, but not Norway: US prisons vs. other models. *Huffington Post*. https://www.huffpost.com/entry/not-the-worst-but-not-norway-us-prisons-vs-other_b_59b0772ae4b0c50640cd646d
 53. Ibid.
 54. The Sentencing Project. (2021, March 3). Private prisons in the United States. <https://www.sentencingproject.org/publications/private-prisons-united-states/>
 55. Duguid, K. (2021, January 21). U.S. private prison revenue under pressure from new Biden rules. *Reuters*. <https://www.reuters.com/article/us-usa-companies-biden-prisons/u-s-private-prison-revenue-under-pressure-from-new-biden-rules-idUSKBN29W14Z>
 56. O’Connor, T. R. *The debate over prison privatization* (p. 1). North Carolina Wesleyan College. <http://faculty.ncwc.edu/TOConnor/417/417lect14.htm>
 57. Makarios, M. D., & Maahs, J. (2012, September). Is private time quality time? *Prison Journal*, 92(3), 336.
 58. Gotsch, K., & Basti, V. (2018, August 2). Capitalizing on mass incarceration: U.S. growth in private prisons. *The Sentencing Project*. <https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/>
 59. Eisen, L.-B. (2021, August 27). Breaking down Biden’s order to eliminate DOJ private prison contracts. *Brennan Center for Justice*. <https://www.brennancenter.org/our-work/research-reports/breaking-down-bidens-order-eliminate-doj-private-prison-contracts>
 60. Bureau of Justice Statistics. *Correctional populations in the United States*, 2016 (p. 2).
 61. Bureau of Justice Statistics. (2021, March). *Jail inmates in 2019*. <https://bjs.ojp.gov/library/publications/jail-inmates-2019>
 62. National Institute of Corrections. (2012, February). *Jail resource issues: What every funding authority needs to know*. <https://s3.amazonaws.com/static.nicic.gov/Library/017372.pdf>

63. National Sheriffs' Association. (1982). *The state of our nation's jails, 1982* [p. 55]. Author.
 64. See a description of such a jail in use and its benefits, by the corrections center of northwest Ohio. [n.d.]. The new generation direct supervision jail. <http://www.ccnoregionaljail.org/newgenerationjail.htm>
 65. Zupan, L. L. (1991). *Jails: Reform and the new generation philosophy* (p. 67). Anderson.
 66. National Institute of Justice. (2010, June). *Programs and activities: Tools for managing inmate behavior* (pp. 103–105). http://www.bscc.ca.gov/downloads/Programs_and_Activities_Tools_for_Managing_Inmate_Behavior_NIC_024368.pdf
 67. National Institute of Justice. [n.d.]. How we review and rate a practice from start to finish. https://www.crimolutions.gov/about_practicereview.aspx
 68. Ibid. Corrections & reentry: Inmate programs & treatment. <https://www.crimolutions.gov/TopicDetails.aspx?ID=31>
 69. U.S. Department of Justice, National Institute of Justice Research in Brief. (1987). *Making jails productive* [p. 1]. Author.
 70. Ibid., p. 16.
 71. Courtesy Sheriff Darin Balaam, Washoe County (Nevada) Sheriff's Office. Inmate work programs. <https://www.washoesheriff.com/sub.php?page=inmate-work-programs>
 72. Vincent, J. (2020, September 16). Federal prison officers are worried drones could one day be used to airlift inmates to freedom. *The Verge*. <https://www.theverge.com/2020/9/16/21439372/drones-prisons-doj-bop-report-smuggling-contraband>
 73. Miller, S. (2018, July 24). Prisons fighting contraband phones get help from courts. *GCN*. <https://gcn.com/articles/2018/07/24/prison-cellphone-court-disable.aspx>
 74. DroneShield. (2017). How prisons can combat drone threats. <https://www.droneshield.com/blog-content/2017/1/14/how-prisons-can-combat-drone-threats>
 75. U.S. Federal Communications Commission. [n.d.]. Putting an end to illegal cell phone use in prisons. <https://transition.fcc.gov/pshs/docs/summits/Combating-Contraband-Cell-Phones-in-Prison-Handout-v4.pdf>
 76. Ha, Y. (2018, October 26). Case study: How a Maine correctional facility reduced contraband instances to zero. <https://www.correctionsone.com/products/facility-products/body-scanners/articles/481700187-Case-study-How-a-Maine-correctional-facility-reduced-contraband-instances-to-zero/>
 77. See Dormehl, L. (2017, September 22). Watch Lockheed Martin burn drones out of the sky with a new laser. *Digital Trends*. <https://www.digitaltrends.com/cool-tech/athena-laser-drone/>; Mogg, T. (2017, December 11). Drone-catching eagles aren't such a good idea after all. *Digital Trends*. <https://www.digitaltrends.com/cool-tech/drone-catching-eagles-retired/>
 78. Peterson, S. (2001, April). The internet moves behind bars. *Government Technology* [Supplement: *Crime and the Tech Effect*], p. 18.
-
- ## CHAPTER 13
1. Abbott, J. H. (1981). *In the belly of the beast: Letters from prison*. Random House, Foreword; for more about Abbott's life and crimes, see Murderpedia. <https://murderpedia.org/male/A/a/abbott-jack-henry.htm>
 2. Goffman, E. (1961). *Asylums: Essays on the social situation of mental patients and other inmates*. Anchor Books.
 3. Le, D. (2015, February 6). The legacy of the Stanford prison experiment lives on at sundance. *The Stanford Daily*. <http://www.stanforddaily.com/2015/02/06/legacy-of-the-stanford-prison-experiment-lives-on-at-sundance/>
 4. Chang, J. (2015, January 26). The Stanford prison experiment. *Variety*. <http://variety.com/2015/film/reviews/sundance-film-review-the-stanford-prison-experiment-1201415952/>
 5. Dilulio, J. J. Jr. (1987). *Governing prisons: A comparative study of correctional management* (p. 167). Free Press.
 6. Bureau of Justice Statistics. (2018, April). *Correctional populations in the United States, 2016* [p. 1]. <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>
 7. World Prison Brief. [n.d.]. United States of America. <http://www.prisonstudies.org/country/united-states-america>
 8. World Prison Brief. [n.d.]. World prison populations list. http://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf
 9. Haney, C. (2012). Prison effects in the age of mass incarceration. *Prison Journal*, 20(10), 3.
 10. Goff, A., Rose, E., Rose, S., & Purves, D. (2007). Does PTSD occur in sentenced prison populations? A systematic literature review. *Criminal Behavior and Mental Health*, 17, 152–162; Heckman, C., Cropsey, K., & Olds-Davis, T. (2007). Traumatic stress disorder treatment in correctional settings: A brief review of the empirical literature and suggestions for future research. *Psychotherapy: Theory, Research Practice, Training*, 44, 46–53.
 11. Sykes, G. (1974). *The society of captives: A study of maximum security prison* [p. 65]. Princeton University Press.
 12. Fuller, J. R. (2010). *Criminal justice: Mainstream and crosscurrents* (2nd ed., p. 396). Prentice Hall.
 13. Sykes, *The society of captives*, p. 12.
 14. Stinchcomb, J. B. (2005). *Corrections: Past, present, and future* [p. 307]. American Correctional Association.
 15. Ibid.
 16. Sykes, G., & Messinger, S. (1970). The inmate social code. In N. Johnston, L. Savitz, & M. Wolfgang (Eds.), *The sociology of punishment and corrections* (pp. 401–408). Wiley.
 17. Haney, *Prison effects in the age of mass incarceration*, p. 56.
 18. Toch, H., & Adams, K. (2002). *Acting out: Maladaptive behavior in confinement*. American Psychological Association.
 19. Paulus, P., Cox, V., McCain, G., & Chandler, J. (1975). Some effects of crowding in a prison environment. *Journal of Applied Social Psychology*, 5, 86–91; McCain, G., Cox, V., & Paulus, P. (1976). The relationship between illness complaints and degree of crowding in a prison environment. *Environment and Behavior*, 8, 283–290; D'Atri, D. (1975). Psychophysiological

- responses to crowding. *Environment and Behavior*, 7, 237–252.
20. *Price v. Johnston*, 334 U.S. 266, 144 F.2d 260 (1948).
 21. *Rhodes v. Chapman*, 52 U.S. 347 (1981).
 22. FindLaw for Legal Professionals. (n.d.). Annotation 8: Eighth Amendment. <http://constitution.findlaw.com/amendment8/annotation08.html#f173>
 23. *Whitley v. Albers*, 475 U.S. 312 (1986).
 24. Price, M. L. (2021, September 21). *Associated Press*. <https://www.usnews.com/news/politics/articles/2021-09-21/rikers-island-should-close-say-4-house-democrats-from-ny>
 25. The Center for Constitutional Rights. (n.d.). Torture: The use of solitary confinement in U.S. prisons. <http://ccrjustice.org/solitary-factsheet>
 26. Pilkington, E. (2014, September 4). Angola three inmate in longest solitary confinement seeking damages in court. *The Guardian*. <http://www.theguardian.com/world/2014/sep/04/angola-three-albert-woodfox-lawsuit-louisiana-prison>
 27. See, for example, Shalev, S. (2011). Solitary confinement and supermax prisons: A human rights and ethical analysis. *Journal of Forensic Psychology Practice*, 11(2/3), 151–183; American Public Health Association. (2014). Solitary confinement as a public health issue. <http://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>; Grassian, S. (2006). The psychiatric effects of solitary confinement. *Washington University Journal of Law and Policy*, 22, 325, 330.
 28. Shalev. Solitary confinement as a public health issue (see section titled “From Re: Medley to Madrid: A Brief History of Legal Challenges to Solitary Confinement in the American Courts”).
 29. *In re Medley*, 134 U.S. 160 (1890).
 30. See U.S. Department of Justice Archives. (2017, March 13). *Report and recommendations concerning the use of restrictive housing*. <https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing>
 31. Xiong, C. (2021, June 27). Chauvin faces long solitary term in prison. *Minneapolis Star Tribune*. <https://www.startribune.com/chauvin-s-prison-time-to-involve-continued-isolation/600072093/>
 32. Hayden, T. (2004, June 14). Putting down a riot. *U.S. News and World Report*, pp. 72–73.
 33. Center for Innovative Public Policies. (2014). Methodology and results: 2013 National Survey of Prison Wardens, conducted in conjunction with updating the resource guide for newly appointed wardens. http://www.cipp.org/uploads/3/7/5/7/37578255/attachment_2_nic_survey_summary_for_web.pdf
 34. Bayer, R. Personal communication. November 12, 2009.
 35. Dilulio, J. J. Jr. (1987). *Governing prisons: A comparative study of correctional management* (p. 37). Free Press.
 36. Bayer, personal communication.
 37. Slansky, J. Personal communication. October 28, 1993.
 38. Ibid.
 39. Hawkins, G. (1976). *The prison: Policy and practice*. University of Chicago Press.
 40. Bureau of Labor Statistics. (n.d.). Correctional officers and bailiffs. <https://www.bls.gov/ooh/protective-service/correctional-officers.htm#tab-1>
 41. Hawkins, *The Prison*, Chapter 4, generally.
 42. Crouch, B. M. (1980). *The keepers: Prison guards and contemporary corrections* (p. 73). Charles C Thomas.
 43. Finn, P. (2000, December). *Addressing correctional officer stress: Programs and strategies* (p. 2). U.S. Department of Justice, National Institute of Justice. <https://www.ncjrs.gov/pdffiles1/nij/183474.pdf>
 44. Loyd, A. (2016). Study: PTSD, depression common among Michigan corrections and forensic officers. <http://www.mco-seiu.org/2016/05/25/press-release-study-ptsd-depression-common-among-michigan-corrections-and-forensic-officers/>
 45. Hawkins, R., & Alpert, G. P. (1989). *American prison systems: Punishment and justice* (p. 340). Prentice Hall.
 46. Ibid., p. 345.
 47. See Bowker, L. H. (1980). *Prison vic-timization* (Chap. 7). Elsevier.
 48. Adapted from Lombardo, L. X. (1989). *Guards imprisoned: Correctional officers at work* (pp. 51–71). Anderson.
 49. Quoted in Advisory Commission on Intergovernmental Relations. (1984). *Jails: Intergovernmental dimensions of a local problem* (p. 1). Author.
 50. World Health Organization. (n.d.). *World report on violence and health, 2002* (p. 149). http://www.who.int/violence_injury_prevention/violence/world_report/chapters/en/
 51. Struckman-Johnson, C., & Struckman-Johnson, D. (2000, December). Sexual coercion rates in seven midwestern prison facilities for men. *Prison Journal*, 80, 379–390; see also Hensley, C., Dumond, R. W., Tewksbury, R., & Dumond, D. A. (2002). Possible solutions for preventing inmate sexual assault: Examining wardens’ beliefs. *American Journal of Criminal Justice*, 27(1), 19–33.
 52. Wolff, N., & Shi, J. (2009). Contextualization of physical and sexual assault in male prisons: Incidents and their aftermath. *Journal of Correctional Health Care*, 15(1). <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2811042/>
 53. Ibid.
 54. Ibid.; also see Alarid, L. F. (2000, December). Sexual assault and coercion among incarcerated women prisoners: Excerpts from prison letters. *Prison Journal*, 80, 391–406.
 55. Santo, A. (2018, July 25). Prison rape allegations are on the rise. *The Marshall Project*. <https://www.themarshallproject.org/2018/07/25/prison-rape-allegations-are-on-the-rise>
 56. Bureau of Justice Statistics. (2020, October). *Prisoners in 2019* (pp. 1, 19). <https://bjs.ojp.gov/content/pub/pdf/p19.pdf>
 57. Feucht, T. F., & Keyser, A. (October 1999). Reducing drug use in prisons: Pennsylvania’s approach. *National Institute of Justice Journal*, p. 11.
 58. Ibid., pp. 11–12.
 59. Ibid., pp. 14–15.
 60. Bureau of Justice Statistics, *Prisoners in 2019*, p. 3.

61. The Sentencing Project. (2020, November 24). Incarcerated women and girls. <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>
62. Enos, S. (2001). *Mothering from the inside: Parenting in a women's prison*. State University of New York Press.
63. Institute on Women and Criminal Justice. (2009, May). *Mothers, infants and imprisonment: A national look at prison nurseries and community-based alternatives* (p. 9). Women's Prison Association. <http://www.wpaonline.org/pdf/Mothers%20Infants%20and%20Imprisonment%202009.pdf>
64. Bureau of Justice Statistics, *Prisoners in 2019*, p. 20.
65. See World Health Organization Europe. (2009). *Women's health in prison: Correcting gender inequities in prison health*. http://www.euro.who.int/__data/assets/pdf_file/0004/76513/E92347.pdf
66. *Jordan v. Gardner*, 986 F.2d 1521 (1993).
67. Bronson, J., & Sufrin, C. (2019, May 16). Pregnant women in prison and jail don't count: Data gaps on maternal health and incarceration. *SAGE, Public Health Reports*. <https://journals.sagepub.com/doi/full/10.1177/0033354918812088>
68. ACLU Briefing Paper. (n.d.). The shackling of pregnant women & girls in U.S. prisons. ACLU National Prison Project. https://www.aclu.org/files/assets/anti-shackling-briefing_paper_stand_alone.pdf
69. Atkins, C. (2019, May 25). New law ends use of restraints on pregnant inmates as advocates push for more to be done. *NBC News*. <https://www.nbcnews.com/politics/donald-trump/new-law-ends-use-restraints-pregnant-inmates-advocates-push-more-n1007526>
70. Kirby, M., & Bernier, J. (2018, March 8). Restraining pregnant inmates. Connecticut Legislature Office of Legislative Research. <https://cga.ct.gov/2018/rpt/pdf/2018-R-0082.pdf>
71. See *Nelson v. Correctional Medical Services*, 583 F.3d 522, 533 (8th Cir. 2009); *Brawley v. State of Washington*, 712 F.Supp.2d 1208, 1221 (W.D. Wash. 2010); also see Ferszt, G. G., Palmer, M., & McGrane, C. (2018, February). Where does your state stand on shackling of pregnant incarcerated women? *Nursing for Women's Health*. [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf)
72. *Turner v. Safley*, 482 U.S. 78, 89 (1987).
73. *Forts v. Ward*, 621 F.2d 1210, 1214 16 (2d Cir. 1980).
74. In *Jordan v. Gardner*, 986 F.2d 1521, 1523 (9th Cir. 1993), a male guard at the WCCW conducted (as per the policy) such a random, full-body, clothed search of a female prisoner. He squeezed her breasts and probed her crotch as well as the seams in her crotch area. While being searched, the female inmate, being distressed and shocked, grabbed hold of nearby cell bars to the extent that, later, her fingers had to be pried loose from them. The federal district court concluded that the cross-gender clothed-body search policy constituted cruel and unusual punishment in violation of the Eighth Amendment.
75. For an excellent overview of incarcerated women's rights, see *A jail-house lawyer's manual*, Chapter 41, Special issues of women prisoners. (2011). *Columbia Human rights law review* (9th ed.). <http://www3.law.columbia.edu/hrlr/jlm/chapter-41.pdf>
76. Ibid.
77. National Alliance on Mental Illness. Mental illness and the criminal justice system. https://www.nami.org/AMI/media/NAMI-Media/Infographics/NAMI_CriminalJusticeSystem-v5.pdf
78. Bureau of Justice Statistics. (2006, September). *Mental health problems of prison and jail inmates* (p. 1). Special report. <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>
79. Treatment Advocacy Center. (2014, April 8). *The treatment of persons with mental illness in prisons and jails: A state survey* (p. 6). <http://www.treatmentadvocacycenter.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf>
80. Harki, G. A. (2019, May 2). Horrific deaths, brutal treatment: Mental illness in America's jails. *Prison Legal News*. <https://www.prisonslegalnews.org/news/2019/may/2/horrific-deaths-brutal-treatment-mental-illness-americas-jails/>
81. Treatment Advocacy Center, *The treatment of persons with mental illness in prisons and jails*, p. 8.
82. Bureau of Justice Statistics, *Prisoners in 2019*, pp. 15–16.
83. Ewing, M. (2015, August 27). When prisons need to be more like nursing homes. *The Marshall Project*. <http://www.themarshallproject.org/2015/08/27/when-prisons-need-to-be-more-like-nursing-homes>
84. Intriago, J. (2021, May 4). Aging behind bars: How elderly convicts are handled in the prison system. *Seniors Matter*. <https://www.seniorsmatter.com/aging-behind-bars-how-elderly-convicts-are-handled-in-the-prison-system/2492270/#:~:text=There%20are%20a%20estimated%2026%2C000,all%20inmates%20across%20the%20country>
85. Harrison, M. (2009). *True Grit Notes* 5, no. 3; Hubert, T. P., Harrison, M. T., & Harrison, W. O. (n.d.). "True Grit": An innovative humanistic living program for a geriatric population. Nevada Department of Corrections.
86. U.S. Department of Justice. (n.d.). About violent gangs. <http://www.justice.gov/criminal/ocgs/gangs/>
87. National Gang Intelligence Center. (n.d.). *National gang threat assessment 2011* (p. 11). U.S. Department of Justice. <http://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment/2011-national-gang-threat-assessment-emerging-trends>
88. Samaha, J. (1988). *Criminal justice* (p. 558). West.
89. Jacobs, J. (1977). *Stateville: The penitentiary in mass society*. University of Chicago Press.
90. Irwin, J. (1980). *Prisons in turmoil*. Little, Brown.
91. Camp, G. M., & Camp, C. G. (1987). *The correctional yearbook*. Criminal Justice Institute.
92. See *Ashker v. Governor of California*, Civil Action No. 4:09-cv-05796-CW (N.D. California, 2012)
93. See Pyrooz, D. (2018, July 1). *Using restrictive housing to manage gangs in U.S. Prisons*, National Institute of Justice. <https://www.nij.gov/topics/corrections/institutional/Pages/using-restrictive-housing-to-manage-gangs-in-us-prisons>

- .aspx; also see *ibid.*, Restrictive housing. <https://www.nij.gov/topics/corrections/institutional/Pages/restrictive-housing.aspx>
94. Molina, G. [2021, October 1]. *Ecuador declares prison emergency after 118 killed in riot*. Associated Press. <https://apnews.com/article/latin-america-prisons-guillermo-lasso-ecuador-drug-cartels-b79572a799d4d9b6b5549504de1dfa2dhttps://apnews.com/article/latin-america-prisons-guillermo-lasso-ecuador-drug-cartels-b79572a799d4d9b6b5549504de1dfa2d>
 95. Lofgreen, V. D. [1991]. *A model of the dynamic power relationship between staff and inmates in a secure correctional facility* [Paper presentation, p. 6]. Western Social Science Association Annual Meeting, Reno, NV
 96. Chase, R. [2018, July 16]. Vaughn prison riot survivor says officials responsible: 'There's blood everywhere.' Associated Press. <https://www.delawareonline.com/story/news/2018/07/16/vaughn-prison-riot-survivor-says-officials-responsible/790721002/>
 97. State of Arizona, Office of the Governor. *The Morey unit hostage incident: Preliminary findings and recommendations* (p. 1). Author.
 98. Associated Press. [2004, September 8]. Officials: Inmates talked of killing jail hostage. *St. Petersburg Times*. http://www.sptimes.com/2004/09/08/State/Officials__Inmates_ta.shtml
 99. For an examination and comparison of these two extremely violent prison riots, see Mahan, S. [1994]. An orgy of brutality at Attica and the killing ground at Santa Fe: A comparison of prison riots. In M. C. Braswell, R. H. Montgomery Jr., & L. X. Lombardo (Eds.), *Prison violence in America* (2nd ed., pp. 253–264). Anderson.
 100. Zlaket, T. A. [2004, October 25]. Personal communication to Hon. Janet Napolitano, Governor of Arizona.
 101. Taylor, K., & Flight, J. [2003]. *Hostage-taking incidents involving women inmates: A profile and exploratory investigation* (p. 5). Correctional Service of Canada.
 102. Ensor, D. [2003, April 15]. U.S. captures mastermind of Achille Lauro Hijacking. *CNN*. <http://www.cnn.com/2003/WORLD/meast/04/15/sprj.irq.abbas.arrested>
 103. See, for example, Peak, K. J., Radli, E., Pearson, C., & Balaam, D. [2008]. Hostage situations in detention settings: Planning and tactical considerations. *FBI Law Enforcement Bulletin*, 77(10), 1–14.
 104. *Ruffin v. Commonwealth*, 62 Va. 790 (1871).
 105. *Cooper v. Pate*, 378 U.S. 546, 384 S.Ct. 1733 (1964).
 106. *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747 (1969).
 107. *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491 (1977).
 108. *Cruz v. Beto*, 405 U.S. 319, 92 S.Ct. 1079 (1972).
 109. *Procunier v. Martinez*, 416 U.S. 396, 94 S.Ct. 1800 (1974).
 110. *Estelle v. Gamble*, 429 U.S. 974, 97 S.Ct. 285 (1976).
 111. *Wolff v. McDonnell*, 418 U.S. 539, 394 S.Ct. 296 (1974).
 112. Fisher, R. [2005, August 10]. What draws people to marry prison inmates? *ABC News*. <http://abcnews.go.com/GMA/US/story?id=889903&page=1>; Fox, J. A. [2014, November 19]. Lovesick over Charles Manson. Really? *USA Today*. <http://www.usatoday.com/story/opinion/2014/11/19/james-alan-fox-manson-nuptials/19279531/>; Reed, B. [2015]. Charles Manson calls off wedding after learning his fiancée is too evil even for him. *BGR Media*. <http://bgr.com/2015/02/10/charles-manson-wedding-called-off/>
 113. Travis, J., Solomon, A. L., & Waul, M. [2001]. *From prison to home—the dimensions and consequences of prisoner reentry* (pp. 6, 9). The Urban Institute.
 114. Lattimore, P. K. [2007, April]. The challenges of reentry. *Corrections Today*, 69(2), 90.
 115. Seiter, R. P. [2012]. *Correctional administration: Integrating theory and practice* (2nd ed., pp. 451–452). Prentice Hall.
 116. *Ibid.*
 1. Osher, C., & Cardi, J. [2022, February 3]. Probation, parole or bond didn't stop these convicts from killing in Denver. *The Denver Gazette*, https://denvergazette.com/news/crime/probation-parole-or-bond-didnt-stop-these-convicts-from-killing-in-denver/article_66edb5c5-d73e-5fae-8801-0967a8367e26.html
 2. Kaeble, D. [2021, December]. Probation and parole in the United States, 2020. *Bureau of Justice Statistics*, <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>
 3. Benekos, P. J. [1990, March]. Beyond reintegration: Community corrections in a retributive era. *Federal Probation*, 54, 53.
 4. See the President's Commission on Law Enforcement and Administration of Justice. [1967]. *Task force report: Corrections* (p. 7). U.S. Government Printing Office.
 5. Benekos, Beyond reintegration, p. 53.
 6. McCarthy, B. R. [1987]. *Intermediate punishments: Intensive supervision, home confinement, and electronic surveillance* (p. 3). Criminal Justice Press.
 7. Nidorf, B. J. [1989, October]. Community corrections: Turning the crowding crisis into opportunities. *Corrections Today*, p. 85.
 8. Benekos, Beyond reintegration, p. 54.
 9. Although neither the word "probation" nor today's definition of it appear in the Bible, it was historically assumed that all mankind was under the sentence of eternal death—an endless life in misery during this life. However, humans could escape this sentence through repentance and faith in Christ; this was man's "probation," an opportunity to escape hell and secure heaven. If he failed to improve this opportunity and died impenitent, the sentence was irrevocably executed, and the man was eternally lost. See Tentmaker, "Probation." <http://www.tentmaker.org/books/SpiritOfTheWord/014Probation.htm>
 10. Abadinsky, H. [1987]. *Probation and parole: Theory and practice* (3rd ed., p. 18). Prentice Hall.
 11. Friedman, L. M. [1973]. *A history of American law* (p. 518). Simon and Schuster.
 12. Cromwell, P. F. Jr., Killinger, G. C., Kerper, H. B., & Walker, C. [1985]. *Probation and parole in the criminal justice system* (2nd ed). West.

CHAPTER 14

13. Augustus, J. (1972). *John Augustus, first probation officer* [pp. 4–5]. Paterson Smith.
14. Augustus, J. (1852). *A report of the labors of John Augustus*. Wright & Hasty, republished in 1984 by the American Probation and Parole Association, pp. 96–97.
15. Abadinsky, *Probation and parole*, p. 143.
16. Eriksson, T. (1976). *The reformers: An historical survey of pioneer experiments in the treatment of criminals* (p. 81). Elsevier.
17. Abadinsky, *Probation and parole*, pp. 146–147.
18. The issues concerned whether parole (1) infringed on the power of the judiciary to sentence, the governor to pardon, or the legislature to determine penalty levels; (2) denied prisoners due process; or (3) constituted cruel and unusual punishment.
19. U.S. Attorney General's Survey of Release Procedures. (1974). *Parole* (Vol. 4, p. 20). Arno Press.
20. Messinger, S. L. (1970). Introduction. In A. von Hirsch & K. J. Hanrahan (Eds.), *The question of parole: Retention, reform, or abolition?* (pp. xviii–xix). Ballinger.
21. U.S. Attorney General's Survey of Release Procedures, *Parole*, p. 20.
22. Kaebler, *Probation and parole in the United States*, 2020.
23. Regoli, R. M., & Hewitt, J. D. (2010). *Exploring criminal justice: The essentials* (p. 316). Jones and Bartlett.
24. Kaebler, *Probation and parole in the United States*, 2020.
25. *Mempa v. Rhay*, 389 U.S. 128 (1967).
26. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).
27. *United States v. Haymond*, 588 U.S. ____ (2019)
28. Kaebler, *Probation and parole in the United States*, 2020.
29. Dietz, P. (1985). Hypothetical criteria for the prediction of individual criminality. In C. Webster, M. Ben-Aron, & S. Hucker (Eds.), *Dangerousness: Probability and prediction, psychiatry, and public policy* (p. 32). Cambridge University Press.
30. Kaebler, D. (2018, April). *Probation and parole in the United States, 2016*. Bureau of Justice Statistics. <https://bjs.ojp.gov/library/publications/probation-and-parole-united-states-2016>
31. *Morrissey v. Brewer*, 92 S.Ct. 2593 (1972).
32. Ibid.
33. If correct, you guessed that this offender was Bernie Madoff. He was never granted parole. He died of natural causes at the age of 82 in a federal prison for inmates suffering from advanced medical conditions.
34. Council of State Governments Justice Center. (2013, January). *The impact of probation and parole populations on arrests in four California cities* (p. 4). US. Department of Justice office of Justice Programs, <http://csgjusticecenter.org/publications/the-impact-of-probation-and-parole-populations-on-arrest-in-four-california-cities/>.
35. Ibid., p. 1.
36. Ibid., p. 17.
37. Ibid., p. 6.
38. U.S. Bureau of Labor Statistics. *Occupational outlook handbook: Probation officers and correctional treatment specialists*. US. Bureau of labor statistics <http://www.bls.gov/ooh/Community-and-Social-Service/Probation-officers-and-correctional-treatment-specialists.htm#tab-2>
39. Ibid.
40. Ntuli, H. S., Khoza, V. I., Ras, J. M., & Potgieter, P. J. (2007). Role conflict in correctional supervision. *Acta Criminologica*, 20(4), 85–95.
41. Ibid.
42. Conrad, J. P. (1991, June). The pessimistic reflections of a chronic optimist. *Federal Probation*, 55, 4–9.
43. DeMichele, M. T. (2007). *Probation and parole's growing caseloads and workload allocation: Strategies for managerial decision making* (pp. 14–15). American Probation and Parole Association. <http://www.appa-net.org/eweb/docs/appa/pubs/SMDM.pdf>
44. Claxton, M., Sinclair, N., & Hanson, R. (2002, December 10). Felons on probation often go unwatched. *Detroit News*, p. 2.
45. DeMichele, *Probation and parole's growing caseloads and workload allocation*, pp. 13–33.
46. Small, S. E., & Torres, S. (2001). Arming probation officers: Enhancing public confidence and officer safety. *Federal Probation*, 65(3), 24–28.
47. Seidler, R. P. (2002). *Correctional administration: Integrating theory and practice* (p. 387). Prentice Hall.
48. Minton, T. D., & Zeng, Z. (2021). Jail inmates in 2020. *U.S. Department of Justice, Bureau of Justice Statistics*. <https://bjs.ojp.gov/content/pub/pdf/ji20st.pdf>
49. Abadinsky, H. (2000). *Probation and parole: Theory and practice* (7th ed., p. 410). Prentice Hall.
50. Petersilia, J., & Turner, S. (1993). *Evaluating intensive supervision probation/parole: Results of a nationwide experiment*. National Institute of Justice.
51. Lawrence, A. B. (1988). Practice in search of a theory: The case of intensive supervision—An extension of an old practice. *American Journal of Criminal Justice*, 12, 293–310.
52. Ibid., p. 293.
53. This information was compiled from ISP brochures and information from the Oregon Department of Corrections by Joan Petersilia.
54. Clear, T. R., & Hardyman, P. R. (1990, January). The new intensive supervision movement. *Crime & Delinquency*, 36, 42–60.
55. Ibid., p. 44.
56. Anas, B. (2012, August 19). Boulder sex offender balks at 'intensive,' asks to be sent to prison. *Daily Camera*. http://www.dailycamera.com/ci_20891466/boulder-sex-offender-balks-at-intensive-probation-asks
57. Ibid.
58. Pew Research Center. (2012, March). Public opinion on sentencing and corrections policy in America. <https://www.pewtrusts.org/en/research-and-analysis/articles/2012/03/30/public-opinion-on-sentencing-and-corrections-policy-in-america>
59. Sims, B. A. (1997). Questions of corrections: Public attitudes toward prison and community-based programs. *Corrections Management Quarterly*, 1(1), 54.
60. Ulmer, J. T. (2001, Spring). Intermediate sanctions: A comparative analysis of the probability and severity of

- recidivism. *Sociological Inquiry*, 71(2), 164–193.
61. Ibid., p. 184.
 62. Ibid., p. 185.
 63. Bureau of Justice Assistance. (2009). *Offender supervision with electronic technology: Community corrections resource* (2nd ed., p. 16). U.S. Department of Justice. http://www.appa-net.org/eweb/docs/APPA/pubs/OSET_2.pdf
 64. Roman, J. K., Lieberman, A. M., Taxy, S., & Downey, P. M. (2012, September). The costs and benefits of electronic monitoring for Washington, D.C. *Urban Institute*. <https://www.urban.org/sites/default/files/alfresco/publication-pdfs/412678-The-Costs-and-Benefits-of-Electronic-Monitoring-for-Washington-D-C-.PDF>
 65. Karp, J. (2020, May 10). Ankle monitors are replacing cash bail, but at a cost. *Law360*. <https://www.law360.com/articles/1271391/ankle-monitors-are-replacing-cash-bail-but-at-a-cost>
 66. Kapa Technologies. (n.d.). Types of electronic monitoring devices. <https://www.kapatec.com/types-of-electronic-monitoring-devices/>
 67. National Institute of Justice. (2016, July). Standard offender tracking systems. *U.S. Department of Justice*. <https://www.ncjrs.gov/pdffiles1/nij/249810.pdf>
 68. Stinchcomb, J. B., & Fox, V. B. (1999). *Introduction to corrections* (5th ed., p. 165). Prentice Hall.
 69. Armstrong, G. A., Gover, a. r., & MacKenzie, D. L. (2002). The development and diversity of correctional boot camps. In R. L. Gido & T. Alleman (Eds.), *Turnstile justice: Issues in American corrections* (pp. 115–130). Prentice Hall.
 70. MacKenzie, D. L. (1995). Boot camp prisons and recidivism in eight states. *Criminology*, 33(3), 327–358.
 71. National Institute of Justice, crime-solutions.gov.
 72. MacKenzie, D. L., & Piquero, A. (1994, April). The impact of shock incarceration programs on prison crowding. *Crime & Delinquency*, 40(2), 222–249.
 73. Hart, S. V., Daniels, D. J., & Ashcroft, J. (2003, June). *Correctional boot camps: Lessons from a decade of research* (p. 2.). U.S. Department of Justice, Office of Justice Programs. *Note*: A comprehensive list of correctional boot camps in operation is not currently available.
 74. Janofsky, M. (2001, July 15). States pressed as 3 boys die at boot camps. *The New York Times*. <https://www.nytimes.com/2001/07/15/us/states-pressed-as-3-boys-die-at-boot-camps.html>
 75. Hart, Daniels, & Ashcroft, *Correctional boot camps: Lessons from a decade of research*.
 76. Jones, J. A. (2012). A multi-state analysis of correctional boot camp outcomes: Identifying vocational rehabilitation as a complement to shock incarceration. *Inquiries*, 4(9), 1–3.
 77. Parent, D. G. (1996, December). Day reporting centers: An evolving intermediate sanction. *Federal Probation*, 60, 51–54.
 78. Marciniak, L. M. (2000, June). The addition of day reporting to intensive supervision probation: A comparison of recidivism rates. *Federal Probation*, 64, 34–39.
 79. Wong, J. S., Bouchad, J., Lee, C., & Gushue, K. (2019). Examining the effects of day reporting centers on recidivism: A meta-analysis. *Journal of Offender Rehabilitation*, 58(3), 240–260.
 80. James, N. (2015, January). *Offender reentry: Correctional statistics, reintegration into the community, and recidivism*. Congressional Research Service. <https://fas.org/sgp/crs/misc/RL34287.pdf>
 81. Wong, J. S., Bouchard, J., Gushue, K., & Lee, C. (2019). Halfway out: An examination of the effects of halfway houses on criminal recidivism. *International Journal of Offender Therapy and Comparative Criminology*, 63(7), 1018–1037.
 82. Pirius, R. (2017). When is a prisoner released to a halfway house? *Lawyers.com*. <http://criminal.lawyers.com/criminal-law-basics/when-is-a-prisoner-released-to-a-halfway-house.html>
 83. Federal Bureau of Prisons. (n.d.). *Completing the transition: Reentry assistance reduces recidivism*. https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp
 84. See, for example, Federal Bureau of Prisons. (2011.). Inmate furloughs. https://www.bop.gov/policy/progstat/5280_009.pdf
 85. See Washington State Institute for Public Policy. (2014, February). *Predicting criminal recidivism: A systematic review of offender risk assessments in Washington state*. http://www.wsipp.wa.gov/ReportFile/1554/Wsipp_Predicting-Criminal-Recidivism-A-Systematic-Review-of-Offender-Risk-Assessments-in-Washington-State_Final-Report.pdf
 86. Bureau of Justice Assistance and the Council of State Governments. (2013, September). *Integrated reentry and employment strategies: Reducing recidivism and promoting job readiness* (p. 10.). <https://www.bja.gov/Publications/CSG-Reentry-and-Employment.pdf>
 87. Ibid., p. 12.
 88. Looman, J., & Abracen, J. (2013). The risk need responsivity model of offender rehabilitation: Is there really a need for a paradigm shift? *International Journal of Behavioral Consultation and Therapy*, 8(34), 32.
 89. See Bourgon, G., & Bonta, J. (2014, September). Reconsidering the responsivity principle: A way to move forward. *Federal Probation*, 78(2), https://www.uscourts.gov/sites/default/files/78_2_1_0.pdf
 90. Hyland, S. S. (2016). Justice expenditure and employment extracts. *Bureau of Justice Statistics*. <https://www.bjs.gov/index.cfm/dataonline/content/index.cfm?ty=pbdetail&iid=6728>

CHAPTER 15

1. Varn, K. (2021, April 2). St. Petersburg teen accused of murder stays in adult court, judge rules. *Tampa Bay Times*. <https://www.tampabay.com/news/crime/2021/04/02/st-petersburg-teen-accused-of-murder-stays-in-adult-court-judge-rules/>
2. Adapted from Waters, R. (2017, September 6). Detention facilities have become warehouses for mentally disturbed youth. *Psychotherapy Networker*. <https://www.psychotherapynetworker.org/blog/details/1293/confronting-a-broken-juvenile>

- justice-system; also see Leniency for Lionel Tate? (2018, March 7). *ABC News*. <https://abcnews.go.com/2020/story?id=123746&page=1>
3. FindLaw. (n.d.). *Juvenile delinquents*. <http://criminal.findlaw.com/juvenile-justice/juvenile-delinquents.html>
 4. For an excellent overview of both historical and contemporary juvenile justice processes, see the National Council of Juvenile and Family Court Judges. (2018). *Enhanced juvenile justice guidelines: Improving court practice in juvenile cases*. https://www.ncjfcj.org/sites/default/files/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf
 5. Pickett, R. S. (1969). *House of refuge: Origins of juvenile reform in New York State 1815–1857* (p. 21). Syracuse University Press.
 6. Platt, A. M. (1977). *The child savers: The invention of delinquency* (2nd ed.). University of Chicago Press.
 7. *People ex rel O'Connell v. Turner*, 55 Ill. 280, 283–84, 287 (1870).
 8. 1899 Ill. Laws 132 *et seq.*
 9. Streib, V. L. (1987). *Death penalty for juveniles*. Indiana University Press.
 10. Shepherd, R. E. Jr. (1999, December). The juvenile court at 100 years: A look back. *Juvenile Justice*, 6(2), 13–21. <http://www.ncjrs.gov/html/ojjdp/jjjourn/a11299/2.html>
 11. Ibid.
 12. Ibid.
 13. Mack, J. (1909). The juvenile court. *Harvard Law Review*, 23, 104–122.
 14. P.L. 93–415, 42 U.S.C. 5601 *et seq.*
 15. Rousch, D. W. (1996). *A desktop guide to good juvenile detention practice* (pp. 26–27.). Office of Juvenile Justice and Delinquency Prevention.
 16. Ibid., pp. 23–24.
 17. See Annie E. Casey Foundation. (2019, February 8). Five things to know about the new juvenile justice act. <https://www.aecf.org/blog/five-things-to-know-about-the-new-juvenile-justice-act/>; also see Kelly, J. (2019, January 8). A complete breakdown of America's new juvenile justice law. *Chronicle of social change*. <http://chronicleofsocialchange.org/featured/a-complete-breakdown-of-americas-new-juvenile-justice-law>
 18. See American Civil Liberties Union. (2019). *Juvenile justice*. [https://www.ACLU.org/issues/juvenile-justice](https://www ACLU.org/issues/juvenile-justice)
 19. Juvenile Law Center. (2018). *Youth in the justice system*. <https://jlc.org/youth-justice>
 20. Rovner, J. (2017, June 1). Solitary confinement is widespread and ineffective. *The Sentencing Project*. <https://www.sentencingproject.org/news/opinion-solitary-confinement-widespread-ineffective/>
 21. See Rovner, J. (2018, October 22). Juvenile life without parole: An overview. *The Sentencing Project*. <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>
 22. Waters, R. (n.d.). Confronting a broken juvenile justice system. *Psychotherapy networker*. <https://www.psychotherapynetworker.org/blog/details/1293/confronting-a-broken-juvenile-justice-system>
 23. Justice Policy Institute. (2015, November 10). *Juvenile incarceration rate has dropped in half. Is trend sustainable?* <http://www.justicepolicy.org/news/9854>
 24. Araujo, M. (2016, November 7). Study: Number of juvenile arrests declining. *Eureka Times-Standard*. <http://www.times-standard.com/article/NJ/20161007/NEWS/161009838>
 25. Federal Bureau of Investigation. (2019). *Crime in the United States*. Table 36. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-36>
 26. Adapted from Martin, G. (2005). *Juvenile justice: Process and systems* (pp. 64–67). SAGE.
 27. Both the text and the diagram are from U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention Programs. (n.d.). *Juvenile justice structure and process: Case flow diagram*. http://www.ojjdp.gov/ojstatbb/structure_process/case.html
 28. Adapted from U.S. Department of Justice, Bureau of Justice Statistics. (n.d.). The juvenile justice system. <http://www.ojp.usdoj.gov/bjs/justsys.htm#sentencing>
 29. Cox, S. M., Allen, J. M., Hanser, R. D., & Conrad, J. J. (2014). *Juvenile justice: A guide to theory, policy, and practice* (p. 104). Pearson.
 30. See Braithwaite, J. (1989). *Crime, shame and reintegration*. Cambridge University Press.
 31. Rovner, J. (2016, April 1). Racial disparities in youth commitments and arrests. *The Sentencing Project*. <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>
 32. Rovner, J. (2021, July 15). Black disparities in youth incarceration. *The Sentencing Project*. <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>
 33. Rocque, M., & Paternoster, R. (2011). Understanding the antecedents of the “school-to jail” link: The relationship between race and school discipline. *Journal of Criminal Law & Criminology*, 101(2), 633–643; see also Amurao, C. (2015). Fact sheet: How bad is the school-to-prison pipeline? *Tavis Smiley Reports*. <http://www.pbs.org/wnet/tavissmileysr/education-under-arrest/school-to-prison-pipeline-fact-sheet/>
 34. Flannery, M. E. (2015, January 5). The school-to-prison pipeline: Time to shut it down. *NEA Today*. <http://neatoday.org/2015/01/05/school-prison-pipeline-time-shut/>
 35. Ibid.
 36. Turner, E. O., & Beneke, A. J. (2020). ‘Softening’ school resource officers: The extension of police presence in schools in an era of Black Lives Matter, school shootings, and rising inequality. *Race Ethnicity and Education*, 23(2), 221–240.
 37. Ward, S. F. (2014, August 4). How do we fix the school-to-prison pipeline? *American Bar Association Journal*. http://www.abajournal.com/news/article/podcast_monthly_episode_53
 38. Schiff, M. (2018). Can restorative justice disrupt the school-to-prison pipeline? *Contemporary Justice Review*, 21(2), 121–139.
 39. Howell, J. C. (1997, December). *Youth gangs*. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (p. 1). <https://www.ncjrs.gov/pdffiles/fs-9772.pdf>
 40. National Gang Center. (n.d.). Frequently asked questions about gangs. <http://www.nationalgangcenter.gov/About/FAQ#q1>
 41. See Pyrooz, D., & Sweeten, G. (2015, April). Gang membership between

- ages 5 and 17 years in the United States. *Journal of Adolescent Health*, 56(4), 414–419; also see Sam Houston State University. (2014, February 16). New study finds U.S. juvenile gang membership tops 1 million. https://www.shsu.edu/pin_www/T@S/2015/gangstudy.html
42. National Gang Center, Frequently asked questions about gangs.
 43. See Wegerhoff, D., Dixon, L., & Ward, T. (2019). The conceptualization of gangs: Changing the focus. *Aggression and Violent Behavior*, 47, 58–67.
 44. Moore, C. L., & Stuart, F. (2022). Gang research in the twenty-first century. *Annual Review of Criminology*, 5(1), 299–320.
 45. See U.S. Department of Justice. (2013, Winter). Office of juvenile justice and delinquency prevention. *NGC Newsletter*, p. 1.
 46. Conly, C. H., Kelly, P., Mahanna, P., & Warner, L. (1993). *Street gangs: Current knowledge and strategies*. U.S. Department of Justice, National Institute of Justice.
 47. Kubek, J. B., Tindall-Biggins, C., Reed, K., Carr, L. E., & Fenning, P. A. (2020). A systematic literature review of school reentry practices among youth impacted by juvenile justice. *Children and Youth Services Review*, 110, 1–9.
 48. Mears, D. P., & Travis, J. (2004, January). Youth development and reentry. *Youth Violence and Juvenile Justice*, 2(1), 3–20; also see Altschuler, D., & Bilchik, S. (2014, April 21). Critical elements of juvenile reentry in research and practice. <http://csgjusticecenter.org/youth/posts/critical-elements-of-juvenile-reentry-in-research-and-practice/>
 49. *Kent v. United States*, 383 U.S. 541 (1966).
 50. American Bar Association. (n.d.). Still seeking the promise of *Gault*: Juveniles and the right to counsel. <http://www.abanet.org/crimjust/juvjus/cjmag/18-2shep.html>
 51. American Bar Association. (n.d.). For schools: Lessons. http://www.abanet.org/publiced/lawday/schools/lessons/handout_gault.html
 52. *Gault v. Arizona*, 387 US 1 (1967).
 53. *Ibid.*, p. 14.
 54. *In Re Winship*, 397 U.S. 358 (1970).
 55. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).
 56. *Breed v. Jones*, 421 U.S. 519 (1975).
 57. *Roper v. Simmons*, 543 U.S. 551 (2005).
 58. *J. D. B. v. North Carolina*, No. 09–11121 (2011).
 59. DeWitte, M. (2019, May 1). Gang-associated youth avoid violence by acting tough online, Stanford sociologist finds. *Stanford News*. <https://news.stanford.edu/2019/05/01/gangs-use-social-media/>
- ## CHAPTER 16
1. Baker, B. (2021, January). Estimates of the unauthorized immigrant population residing in the United States: January 2015–January 2018. *Department of Homeland Security*. https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Pop_Estimate/UnauthImmigrant/unauthorized_immigrant_population_estimates_2015_-_2018.pdf
 2. Statista. (n.d.). Estimated number of illegal immigrants in the United States in 2018, by country of origin. <https://www.statista.com/statistics/269365/origin-of-illegal-immigrants-in-the-us/>
 3. Baker, Estimates of the unauthorized immigrant population residing in the United States; also see USA Facts. (n.d.). How many people are coming to the US and who is immigrating to the US today? https://usafacts.org/state-of-the-union/immigration/?utm_source=google&utm_medium=pc&utm_campaign=ND-Immigration&gclid=CjwKCAjw8cCGBhB6EiwAg0Reyxj_1DZaubaYQ6vPYiWwJSyGiUq4LL_KbEhwHnxvsn82RbbNCX412BoCS44QAvD_BwE
 4. Jordan, M. (2018, December 11). 8 million people are working illegally in the U.S. Here's why that's unlikely to change. *The New York Times*. <https://www.nytimes.com/2018/12/11/us/undocumented-immigrant-workers.html>
 5. Edwards, H. S. (2018, March 8). Bye dad, I love you. *Time*, p.39.
 6. Salazar, J. (2021, February 28). New wave of migrants arrive on southern border under Biden's immigration overhaul plan. *Spectrum News*. <https://spectrumloc.alnews.com/tx/austin/news/2021/02/24/new-wave-of-migrants-arrive-on-southern-border-after-biden-s-immigration-overhaul-plan>
 7. See Congress.gov. <https://www.congress.gov/bills/117th-congress/house-bill/1177/actions>
 8. Jervis, R. (2021, May 8). Police help border patrol catch migrants, which is bad policy, experts say. *USA TODAY*. <https://www.usatoday.com/in-depth/news/nation/2021/05/03/influx-migrants-border-local-police-role-immigration-enforcement/7399146002/>
 9. Homer, M. (2021, June 16). Florida Gov. Ron DeSantis says he's sending law enforcement help to Texas, Arizona borders. *KHOU-11*. <https://www.khou.com/article/news/politics/florida-gov-desantis-law-enforcement-texas-border/285-d4f3d01a-8f07-4320-a083-684e501931f9>
 10. KOLO TV. (2019, January 24). Suspect in four northern Nevada murders arrested. <https://www.kolotv.com/content/news/Two-people-found-dead-in-south-Reno-home-504465091.html>
 11. Gomez, A. (2018). Mollie Tibbetts murder case: Here are the facts on immigrants committing crimes in US. *USA TODAY*. <https://www.usatoday.com/story/news/nation/2018/08/22/mollie-tibbetts-murder-reignites-debate-over-immigrant-crime/1060792002/>
 12. *Ibid.*
 13. *Ibid.*
 14. United Nations high commissioner for refugees. (2020, June 18). How many refugees are there around the world? <https://www.unhcr.org/en-us/figures-at-a-glance.html#:~:text=How%20many%20refugees%20are%20there,under%20the%20age%20of%2018>
 15. Center for Disaster Philanthropy. (2021, June 14). Southern border humanitarian crisis. <https://disasterphilanthropy.org/disaster/southern-border-humanitarian-crisis/>
 16. *Ibid.*
 17. For a fuller discussion of this topic, see Federation for American

- Immigration Reform. (2016, January). The role of state & local law enforcement in immigration matters and reasons to resist sanctuary policies. <http://www.fairus.org/sites/default/files/2017-08/The%20Role%20Of%20State%20%26%20Local%20Law%20Enforcement%20.pdf>
18. See Division C of Public Law 104–208, 110 Stat. 3009–546, enacted September 30, 1996.
 19. Gomez, A. (2016, November 25). Trump may empower local police to round up immigrants. *USA TODAY*.
 20. American Immigration Council. (n.d.). The 287(g) program: An overview. <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>
 21. ¹See U.S. Immigration and Customs Enforcement. (2022, February 11). Delegation of immigration authority section 287(g) immigration and nationality act. <https://www.ice.gov/identify-and-arrest/287g>
 22. National Immigrant Justice Center. (2021). Over 60 members of Congress push President Biden and DHS to end programs that conscript local police to work as federal immigration enforcement [Press release]. <https://immigrantjustice.org/press-releases/over-60-members-congress-push-president-biden-and-dhs-end-programs-conscript-local>
 23. U.S. Department of Justice, Executive Office for Immigration Review. (2021, February 3). About the office. <https://www.justice.gov/eoir/about-office>
 24. U.S. Department of Justice, Executive Office for Immigration Review. (2021, April 19). Adjudication statistics. <https://www.justice.gov/eoir/page/file/1242166/download>
 25. Smart, R., & Schell, T. L. (2021, April 15). Mass shootings in the United States. *RAND Corporation*. <https://www.rand.org/research/gun-policy/analysis/essays/mass-shootings.html>
 26. See 112th Congress, Public Law 112–265, 2013.
 27. Berk, R. (2022). What is a mass shooting? What can be done? *University of Pennsylvania, Department of Criminology*. <https://crim.sas.upenn.edu/fact-check/what-mass-shooting-what-can-be-done>
 28. della Cava, M., & Stucka, M. (2021, February 26). Mass shootings hit a record high in 2020. Can COVID-19 vaccines bring peace in 2021? *USA TODAY*. <https://www.usatoday.com/story/news/nation/2021/02/26/mass-shootings-soared-covid-black-lives-matter-fears-2020/6784339002/>
 29. Skye, G., Hall, M., & Su, J. L. (2021, May 28). The US has had 225 mass shootings in 2021 so far. Here's the full list. *Insider*. <https://www.insider.com/number-of-mass-shootings-in-america-this-year-2021-3>
 30. Cramer, C. E. (2019, August 7). Mass murder without guns. *National Review*. <https://www.nationalreview.com/2019/08/mass-murder-without-guns/>
 31. Peterson, J., & Densley, J. (2019, August 4). Here's what we've learned about the shooters. *Los Angeles Times*. <https://www.latimes.com/opinion/story/2019-08-04/el-paso-dayton-gilroy-mass-shooters-data>
 32. Seifert, K. (2016, June 14). What can be done to prevent the next mass murder? *Psychology Today*. <https://www.psychologytoday.com/us/blog/stop-the-cycle/201606/what-can-be-done-prevent-the-next-mass-murder>
 33. Fox, M. (2015, October). Mass killings inspire copycats, study finds. *NBC News*. <https://www.nbcnews.com/health/health-news/yes-mass-killings-inspire-copycats-study-finds-n386141l>
 34. Ibid.
 35. Conley, T. M. (2019, September 8). What the government can (and cannot) do about mass shootings. *Securityblog*. <https://www.securitymagazine.com/blogs/14-security-blog/post/90889-what-the-government-can-and-cannot-do-about-mass-shooting>
 36. Ibid.
 37. Asmelash, L. (2021, April 21). Indiana's 'red flag' law should have prevented the FedEx shooting. *CNN*. <https://www.cnn.com/2021/04/21/us/red-flag-laws-explainer-trnd/index.html>
 38. Associated Press. (2021, May 31). Man accused of plotting a mass shooting at Walmart arrested in Texas. <https://www.usatoday.com/story/news/nation/2021/05/31/walmart-shooting-plot-man-arrested-kerrville-texas/5279254001/>
 39. See National Alliance for Mental Illness. (n.d.). Mental health by the numbers. <https://nami.org/mhstats>
 40. Conley, What the government can (and cannot) do about mass shootings.
 41. Podium. (2019, August 8). *We're underestimating the role of social media in mass shootings, and it's time to change*. <https://thenextweb.com/news/were-underestimating-the-role-of-social-media-in-mass-shootings-and-its-time-to-change>
 42. Harris, R. (2015, May 13). A checklist for preventing mass killings. *Governing*. <https://www.governing.com/gov-institute/voices/col-steps-prevent-mass-killings.html>
 43. Police Executive Research Forum. (2014, March). The police response to active shooter incidents. https://www.policeforum.org/assets/docs/Critical_Issues_Series/the%20police%20response%20to%20active%20shooter%20incidents%202014.pdf
 44. See, for example, Guardian Defense. (n.d.). Active shooter training for law enforcement and police officers. <https://guardiandefenseplan.com/active-shooter-training-for-law-enforcement/>
 45. Harris, A checklist for preventing mass killings.
 46. Colarossi, J., & McAlpine, K. J. (2019, August 6). The FBI and CDC datasets agree: Who has guns—not which guns—linked to murder rates. *Boston University*. <http://www.bu.edu/articles/2019/state-gun-laws-that-reduce-gun-deaths>
 47. Steinlage, M. (2020). Liability for mass shootings: Are we at a turning point? *American Bar Association*. https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2019-20/winter/liability-mass-shootings-are-we-a-turning-point/
 48. Ibid.
 49. Ibid.
 50. Ibid.
 51. 15 U.S.C. § 7903(5)(A).
 52. Ritter, K. (2020, September 30). Court OK's \$800 M settlement for MGM resorts, Vegas victims. *Associated*

- Press. <https://apnews.com/article/lawsuits-shootings-las-vegas-mass-shooting-nevada-las-vegas-cd07b4640a5a8e6d32ccbccd1aae2e65>
53. Steinlage, Liability for mass shootings: Are we at a turning point?
 54. Makortoff, K. (2021, June 10). World's biggest meat producer JBS pays \$11 m cybercrime ransom. *The Guardian*. [https://www.theguardian.com/business/2021/jun/10/worlds-biggest-meat-producer-jbs-pays-11-m-cybercrime-ransom#:~:text=JBS%2C%20the%20world's%20biggest%20meat,the%20US%2C%20Australia%20and%20Canada.Rishi;also see Rishi, L., & Duffy, C. \(2021, June 4\). Hackers have a devastating new target. *CNN Business*, <https://www.cnn.com/2021/06/03/tech/ransomware-cyberattack-jbs-colonial-pipeline/index.html>](https://www.theguardian.com/business/2021/jun/10/worlds-biggest-meat-producer-jbs-pays-11-m-cybercrime-ransom#:~:text=JBS%2C%20the%20world's%20biggest%20meat,the%20US%2C%20Australia%20and%20Canada.Rishi;also%20see%20Rishi,L.,&Duffy,C.(2021,June4).Hackershave%20adevastatingnewtarget.CNNBusiness,https://www.cnn.com/2021/06/03/tech/ransomware-cyberattack-jbs-colonial-pipeline/index.html)
 55. PEW. (2021, May 14). Hackers threaten to release police records, knock 911 offline. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/05/14/hackers-threaten-to-release-police-records-knock-911-offline>; also see BBC News. (2021, April 27). Cyber-attack hackers threaten to share US police informant data. <https://www.bbc.com/news/world-us-canada-56898711>
 56. BBC News. (2021, March 20). Russian pleads guilty to Tesla ransomware plot. <https://www.bbc.com/news/world-us-canada-56469475>
 57. Mehrotra, K., & Turton, W. (2021, May 21). CNA paid \$40 million in ransom after March cyber attack. *Insurance Journal*. <https://www.insurancejournal.com/news/national/2021/05/21/615373.htm>
 58. Lyengar, R., & Duffy, C. (2021, June 3). Hackers have a devastating new target. *CNN*. <https://www.cnn.com/2021/06/03/tech/ransomware-cyberattack-jbs-colonial-pipeline/index.html>
 59. Cybersecurity Exchange. (2020, October 30). 4 types of cyberattacks that you're most likely to face. *International Council of E-Commerce Consultants*, October 30, 2020, <https://blog.eccouncil.org/4-types-of-cyberattacks-that-youre-most-likely-to-face/>
 60. Ibid.
 61. Federal Bureau of Investigation. (n.d.). The cyber threat. <https://www.fbi.gov/investigate/cyber>
 62. See <https://www.fbi.gov/investigate/cyber/national-cyber-investigative-joint-task-force>
 63. Porterfield, C. (2021, June 3). Department of Justice creates new task force to take on ransomware attacks. *Forbes*. <https://www.forbes.com/sites/carlieporterfield/2021/06/03/departments-of-justice-creates-new-task-force-to-take-on-ransomware-attacks/?sh=4acaad8f4b80>
 64. Ready. (n.d.). Protect yourself against cyberattacks. <https://www.ready.gov/cybersecurity>
 65. U.S. Attorney's Office, District of Connecticut. (2021, June 16). Russian national convicted of charges relating to Kelihos Botnet. <https://www.justice.gov/usao-ct/pr/russian-national-convicted-charges-relating-kelihos-botnet>
 66. *Van Buren v. U.S.*, 593 U.S. ___, No. 19-783 (June 3, 2021).
 67. Simons, T. (2018, June 29). Is it time for a court dedicated to cybercrime? *Thomson Reuters*. <https://www.legalexecutiveinstitute.com/justice-ecosystem-cybercrime-court/>

APPENDIX

1. See Library of Congress. Primary Documents in American History: The Bill of Rights. <http://www.loc.gov/rr/program/bib/ourdocs/billofrights.html>

INDEX

- absolute ethics, 79, 94–95
adversarial system, 196–98, 223–24, 246
alternatives to incarceration, 252, 279, 282, 331–34, 351, 357–58
American Probation and Parole Association (APPA), 348–49
APPA (American Probation and Parole Association), 348–49
appeals courts, 196–97, 201, 204–7, 220, 230, 237, 262
armed robbery, 55, 70, 270
arrest, juvenile, 74, 371
arrest people, 82, 162, 180
- BOP (Bureau of Prisons), 106, 110, 274, 292–94, 321
Bureau of Prisons. *See* BOP
- capital cases, 16, 189, 271
cases
 civil, 30–31, 102, 114, 201, 204–5, 212, 378
 misdemeanor, 16, 20
CBP (Customs and Border Protection), 106, 186, 388
celebrated cases, 18–19, 21, 41
circuit courts, 29, 206–7, 223
Code of Conduct for United States Judges, 88, 91
cold cases, 97, 127, 147, 149
community policing, 88, 97, 105, 118, 126–27, 139–40, 144, 149, 160
constitutional policing, 88, 152–53, 160, 167
control of incarcerated persons, 317–18
correctional organizations, 279, 282–83, 286, 303–4
Council of State Governments (CSG), 344–45
court administrator, 90, 203, 224, 239
Court Methods and Challenges, 193, 251–77
Court Organization, 193–223
court personnel, 222, 234, 380
court reporters, 90, 205, 239–40, 246
courtroom, 215, 217, 220–22, 224, 227, 229, 232–33, 236, 239, 365, 368
courtroom actors, 198, 227, 239
courtroom civility, 226–27, 233, 246
courtroom work group, 193, 226, 231, 236, 239, 246
courts
 adult, 242, 362–63, 366, 375, 379, 381, 384
 highest, 29, 176, 197, 204, 206–7, 219
 problem-solving, 202, 216
 superior, 197, 381
- court system, 76, 197, 201, 212, 220, 223–24, 228, 240, 301, 383
crime analysis, 59–60
crime analyst, 59, 62
crime and punishment, 4, 23, 57, 251, 254, 276
crime control, 4–5, 10–12, 21–22, 252
crime control model, 11–12, 21–22, 79, 255, 257, 277
crime figures, 43, 45
Crime Policy, 359, 385–97
crime rates, 42–44, 50, 56, 121, 134, 181, 257, 259, 262, 276, 388
crimes
 committed, 60–61, 217, 333–34
 hate, 43–44, 46
 juvenile, 138, 359, 370–72, 382
 victimless, 26, 41, 133
crimes and punishments, 28, 56
crime scene investigation, 140, 143–44
crime scene investigator, 143–44
crime scenes, 31, 97, 126, 142–45, 147, 149, 175, 236
crime victims, 46, 228, 266–67, 300, 304, 311, 342–43, 355
criminal acts, 6, 21, 26, 28, 32, 34–35, 37, 64, 240, 242, 283, 287, 364–65
criminal cases, 18, 21, 30–31, 185, 197, 202, 204–5, 216, 219, 226, 236–37, 258, 265
criminal convictions, 61, 212, 275, 287
criminal courts, 164, 198, 223, 365, 374, 377, 379
criminal defendants, 11, 15–16, 21, 185, 190, 205, 207, 210, 213, 217, 235, 240
criminal defense attorneys, 226, 258–59
criminalistics, 126, 141, 144, 149
criminal justice employees, 76–77, 80, 83, 95, 140
criminal justice officials, 6, 11, 21–22
criminal justice process, 4–6, 10, 12, 21–23, 209, 223, 236, 265, 343
criminal justice students, 40, 76–77, 93, 95, 144, 277
criminal justice system, 4–7, 10–14, 17–18, 20–22, 48–49, 55–56, 135–37, 171, 209, 212–13, 216–17, 227, 235–37, 245–46, 282–84, 332–33, 362–63, 369–70, 386
criminal offenses, 5, 11, 18, 35, 41, 286, 303, 364, 382
criminal trial, 31, 90, 164, 170, 173, 180, 187, 190, 196–97, 213–14, 218
criminal victimization, 47, 62
CSG (Council of State Governments), 344–45
- Customs and Border Protection. *See* CBP
cybercriminals, 251, 386, 394–96, 398
- DEA (Drug Enforcement Administration), 77, 106, 109, 111, 172
death penalty, 4, 16–17, 78, 196–97, 230, 252, 255, 258–59, 268–77
death sentences, 197, 250, 259, 269–70, 272–73, 276, 296
defendants, 10–11, 15–17, 19, 30–34, 37–38, 50–51, 186, 189–90, 196–98, 209–13, 215–19, 222–24, 226–27, 234–40, 242–45, 253–54, 258, 265–67, 270–71, 273–76
defense, 30, 33, 51, 56, 189, 210–15, 217–19, 223–24, 226, 237, 239–40, 242–47, 253
defense attorneys, 90, 94–95, 193, 198, 212, 214–16, 226–27, 235–37, 239–41, 243, 245–46, 250, 253–54
Department of Homeland Security. *See* DHS
Department of Justice (DOJ), 47, 106, 109–10, 112, 121–22, 128, 130, 274–75, 297, 299, 301, 315, 395, 397
detective work, 118, 126
devices, handheld wireless
 communications, 34–35
DHS (Department of Homeland Security), 100–101, 106–8, 112, 121–22, 156, 387, 390, 393
district courts, 28–29, 176–77, 181, 199, 201, 205–7, 209, 223
district judges, 91, 205–6, 263
DOJ. *See* Department of Justice
drug courts, adult, 216, 328
Drug Enforcement Administration. *See* DEA
dual-court system, 197, 201, 215, 222–23
- effects on incarcerated persons, 282, 294–95
eras of policing, 97, 100–101, 105, 121, 139
ethics, 4, 10, 20, 22, 70, 76–80, 82, 85, 88–89, 92–95, 130
evidence cameras, 222–23
executions, 156, 176–77, 250, 252, 259, 269–77, 279, 381
- false arrest, 164, 167
FBI (Federal Bureau of Investigation), 5, 26, 35, 39–40, 42–46, 104, 106, 109, 111, 113, 390, 393, 395–98
federal agencies, 29, 106, 108, 111–12, 119, 156–57, 389, 395, 397
Federal Bureau of Investigation. *See* FBI

- Federal Bureau of Prisons, 106, 257, 292, 303, 321
- federal courts, 28, 196–97, 199, 201, 205–7, 209, 275, 315, 321, 393, 396
- federal court system, 29, 196–97, 205, 223
- federal laws, 29, 49, 107–9, 189, 201, 206, 215, 301, 321, 330, 393
- federal prisons, 6, 257, 275, 282, 285, 292–94, 297, 303–4, 315, 319–21, 323
- federal prison system, 284–85, 291, 294, 303–4, 315
- felony cases, 16, 102, 201, 242–43
- Field training officer. *See* FTO
- first-degree murder, 35, 37–38, 196–97, 244, 263, 340, 369
- foundations of law and crime, 26–27, 29–51
- FTO (Field training officer), 131, 148–49
- general jurisdiction, 201–2, 223, 229
- global positioning system. *See* GPS
- GPS (global positioning system), 182, 200, 351
- grand jury, 13, 16, 185, 211–12, 223–24
- house arrest, 17, 279, 330, 332–33, 350–52, 357–58
- IACP (International Association of Chiefs of Police), 43, 82
- ICE (Immigration and Customs Enforcement), 106, 108, 389, 398
- Immigration and Customs Enforcement. *See* ICE
- immigration enforcement, 388, 397
- imprisonment, 145, 164, 237, 283, 287, 310–12, 320, 329, 334, 339, 350
- incarcerated persons, 7, 18, 199, 253, 255–57, 259–61, 271–72, 274–76, 282–304, 308–30, 335–36, 340–41, 344, 348, 350–57
- incarcerated persons and staff, 299, 308, 311, 316, 319, 325
- incarcerated women, 308, 321–22
- insanity defense, 243–45
- intensive supervision probation and parole, 349, 357
- Internal Revenue Service. *See* IRS
- International Association of Chiefs of Police (IACP), 43, 82
- IRS (Internal Revenue Service), 111–12, 122
- jail personnel, 309, 316, 318
- jails, 17–18, 27, 31–32, 92–93, 95–96, 162, 164, 212–13, 215–17, 252, 279–305, 308–9, 313–15, 318, 320–23, 326, 329–30, 349, 352–54, 357–58
- jails and prisons, 290, 301, 303, 352, 354
- judges
 chief, 78, 206, 224, 234
 district court, 90, 203, 205, 263
 new, 231–32, 245
- judicial ethics, 88–89, 94
- judicial misconduct, 226–27, 229, 233–34, 246
- jury trials, 213–15, 381
- justice system, 4–5, 7, 10, 15, 21–22, 27, 32, 36, 235–36, 239–40, 362, 370–71, 374
- juvenile court system, 256, 362
- juvenile justice, 359–83
- juvenile justice process, 266, 363, 370, 372–74, 379
- juvenile justice system, 18, 362–63, 366, 368–70, 374, 376, 382–83
- juveniles, 6, 13, 20–21, 60, 62–64, 201, 238, 242, 346, 359, 362–75, 379–84
- Law Enforcement Code of Ethics. *See* LECE
- lawful arrest, 175–76, 180, 182, 190
- laws, public, 91, 258
- laws of arrest, 97, 141, 169
- lawsuits, 30, 42, 152, 154, 156, 164, 166–67, 275, 299, 317, 393
- LECE (Law Enforcement Code of Ethics), 82, 94
- legal system, 26, 32–33, 49–50, 74, 171, 229
- life sentences, 6–7, 264, 282, 369–70
- lifetime appointments, 90, 196, 199
- local jails, 18, 35, 279, 282, 284–85, 292, 297, 300, 305, 310, 320–21
- lower courts, 20, 29, 184, 201–2, 208–9, 220, 223
- major trial courts, 201–2
- mass killings, 392–93
- mass murders, 359, 385–87, 390–92, 397–98
- persons committing, 390, 392, 397
- mental health courts, 216, 323
- methods of execution, 250, 271–72, 276–77
- Miranda, 32, 83, 120, 145, 170, 175, 185–87, 190–91, 210, 381, 383
- motor vehicle theft, 40, 44–45, 47, 60, 66–67
- movements of incarcerated persons, 282, 293, 299, 320
- National Center for State Courts, 204, 214, 222
- National Crime Victimization Survey. *See* NCVS
- National Incident-Based Reporting System, 43–44, 47, 50
- NCVS (National Crime Victimization Survey), 43, 47–48, 50
- new generation/direct supervision jails, 298–99, 304
- officers, 32, 76–88, 92, 94–95, 101–3, 105, 114–18, 132–41, 148–50, 155–56, 158–60, 165, 172–76, 180–82, 184–87, 190, 299, 316–18, 348–50, 371
- organizational structure, 115–16, 121–22, 202–3, 290–91, 297
- organized crime, 26, 42, 50, 81–82, 112
- pains of imprisonment, 310–12, 329
- parole, 12–13, 18, 244–45, 251–52, 256–57, 259–60, 266–67, 279, 286–87, 331–37, 340–46, 348–50, 356–58, 369–71, 383
- parole board, 18, 260, 282, 330, 344, 358
- parole conditions, 267, 342
- parolee, 4, 18, 333, 335, 345
- parole officer (PO), 18, 136, 279, 332–33, 342, 346, 348–50, 356–58, 376
- parole officers, 18, 136, 279, 332–33, 342, 346, 348–50, 356–58
- parole work, 344–45
- personal information, 394, 396
- personnel, 108, 114–15, 117, 122, 143, 156, 279, 289, 291, 308, 318
 correctional, 279, 286, 310, 317
 investigative, 146–47, 149
- person on probation, 56, 337–40, 342, 346, 348–50, 356
- persons
 convicted, 17, 220, 227, 252, 275–77, 287, 333, 353, 356
 young, 353, 363, 368–69, 374–75, 381, 383–84
- persons committing offenses, 63, 72, 252, 262, 359
- persons on parole, 340, 342, 344, 348, 356
- persons on probation and parole, 350, 357
- PIO (public information officer), 208, 288
- PO. *See* parole officer
- police, 4–6, 10–11, 14–15, 18–22, 32, 39–41, 43–44, 46–48, 76–77, 79–88, 95–97, 100–191, 207, 209–13, 235, 286, 366–67, 371, 380–81, 391–93
- police abuses, 156, 163
- police actions, 10, 152, 161, 207
- police agencies, 77, 114–15, 121–22, 127, 129, 131, 135, 140, 142, 145, 158, 160, 162
- police and prosecutors, 11, 19, 21, 241
- police arrest, 81, 138, 275
- police authority, 49, 126, 161
- police behaviors, 76, 86, 137, 153
- police brutality, 152, 162–63, 167–68
- police chief, 62, 115–16, 129, 138, 155, 161–62
- police corruption, 81–82, 85, 94–95, 103, 139
- police departments, 14–15, 77, 82, 84, 87, 95, 100–101, 104–5, 127, 135, 144
 local, 54, 114–15, 156, 388, 397
- police leaders, 80, 85, 105, 160
- police methods, 105, 152–54
- police officers, 14–15, 19–20, 32, 34–35, 49, 76–86, 92–93, 117–18, 126–33, 135–36, 138, 148–49, 152–53, 157–58, 162–67, 172, 174–76, 180–81, 184–85, 316–17
 corrupt, 81, 94
- Police Organization, 97–123, 127, 135

- police reform, 97, 101, 152–57, 167
- police services, 84, 134, 153, 180
- police station, 163, 187, 209, 236
- police use, 144, 149, 155
- police work, 51, 86, 105, 121, 127, 132, 135–36, 152, 167, 371
- policies, 84–85, 88, 93, 95, 107, 110, 160–61, 168, 170, 294, 297, 318, 321–22, 369–70, 389
- policing, 80–81, 83, 88, 97, 100–101, 103–5, 115, 121, 123, 126, 132–37, 139, 149, 152–53, 155
- Policing Methods and Challenges, 97, 153–67
- Policy-making, 198, 224
- prisoners, 7, 84, 115, 260, 309, 316, 321, 327
- prison gangs, 323–24
- prison industries, 290–92, 303–4, 318
- prisonization, 308–9, 311, 329
- prison life, 259, 287, 311, 329
- prison officials, 273, 301, 312, 322, 324
- prison populations, federal, 293–94, 303
- prisons, 17–18, 27, 31–32, 35, 92–93, 199, 244–45, 250–53, 257, 259–60, 281–85, 287–92, 294–98, 301–4, 308–12, 315–24, 326–30, 332–33, 348–54, 356–58
- prisons and jails, 43, 252, 279, 282–87, 289–305, 308–9, 320, 323, 326, 329–30, 354
- prison systems, 7, 260, 289, 296, 336
- prison wardens, 20, 275, 302, 309, 316, 330
- private police, 97, 100–101, 119–20
- private prisons, 297, 304
- probable cause, 12, 15–16, 164–66, 170–77, 181–82, 185, 190–91, 209, 211, 340, 342, 367, 371
- probation, 13, 17, 20, 31–32, 219, 279, 331–34, 336–42, 344–51, 356–58, 367–68, 370, 373, 375, 380
- probation and parole, 70, 252, 279, 332–34, 344, 354, 357–58
- probation and parole officers, 279, 332–33, 346, 349, 357–58
- probation officers, 136, 205, 231, 338–39, 346–50, 356–57, 368, 384
- probation violation, 286, 338, 346, 356
- problem analysis triangle, 68, 140
- Problem-Oriented Policing, 68–69, 139, 150
- procedural justice, 152–53, 157, 160–61, 167, 222
- property crimes, 45, 47, 66–67, 132, 235, 320
- prosecutorial immunity, 236, 246
- prosecutors and defense attorneys, 76, 94, 226–27, 235–36, 250
- public information officer (PIO), 208, 288
- public order crimes, 41, 50
- ratio of staff to incarcerated person, 292, 303
- reading, 4, 26, 54, 76, 100, 126, 152–53, 170, 196, 226, 250, 282, 308, 332, 362, 386
- rearrest, 287, 328, 350, 353
- rehabilitation of incarcerated persons, 286, 304, 353
- Repeat offender program. *See* ROP
- response time, 105, 121
- restorative justice, 332–33, 354–57, 370, 378
- rights of incarcerated persons, 308, 312, 321, 326–27, 329–30
- ROP (Repeat offender program), 145, 149
- school-to-prison pipeline, 359, 362–63, 369, 377–78, 383–84
- searches incident, 175–76
- searches incident to lawful arrest, 175–76
- search warrant, 49, 83, 170–74, 176, 179–80, 182, 184–85, 190–91, 207, 371
- security levels, 92, 94, 289, 292, 303
- selecting judges, 228, 246
- self-defense, 35, 51, 113, 212, 240–41, 246–47, 312
- sentencing, 12–13, 16–17, 58–59, 193, 219, 249–54, 262–63, 265–67, 270, 276, 285, 287, 343, 382–83
- sentencing and punishment, 193, 249, 251–54, 287
- sentencing decisions, 197, 250, 253, 276–77
- sentencing guidelines, 12, 219, 261–63, 277, 368
- shock probation/parole, 351, 357
- situational crime prevention, 67–69, 73, 140
- slaves of the state, 326, 329
- social conflict theories, 64–65, 73–74
- social structure theories, 61–63
- special-purpose state agencies, 114, 122
- speedy trial, 217, 223–24, 239
- staff, ratio of, 292, 303
- Stafford, 208–9
- state and federal prisons, 275, 297, 320–21
- State bureau, 113, 121–22
- state courts, 29, 72, 171, 189, 196, 201, 204–6, 214, 222, 228–30, 324
- state court systems, 196–97, 201, 205–6, 224
- state judges, 89, 228–29
- state law enforcement agencies, 100, 121–22
- state laws, 7, 29, 35, 202, 204, 210, 217, 241–42, 250, 254, 263
- state police, 111, 113, 122
- state prisons, 18, 279, 282, 285, 287, 290, 294, 297, 303–5, 310, 319–21
- state troopers, 113, 174
- status offenses, 18, 365, 369, 382–83
- supermax prisons, 282, 284, 293–95, 304
- Supreme Court decisions, 158, 174, 199, 273, 326, 363, 396
- Supreme Court's decision, 187, 275, 327
- suspect, 14, 78, 80, 83–84, 142–45, 147, 158–59, 163, 172–74, 176, 180–82, 186–88, 190, 209, 381
- Theories of Criminality and Crime, 55–73
- three-strikes laws, 6–7, 22, 254, 257, 276
- trial
 - awaiting, 210, 215, 217, 283–85, 297, 303, 369
 - civil, 31, 166
- trial by jury, 16, 28, 213, 262, 381
- trial courts, 16, 197, 201–2, 204, 220, 223–24, 239, 275
- trial courts of general jurisdiction, 202, 223, 229
- trial judge, 209, 232, 262, 381
- trial process, 17, 193, 195–96, 217–18, 224, 246
- UCR (Uniform Crime Reporting), 43, 46–47
- UCR Program, 44, 47
- Uniform Crime Reporting. *See* UCR
- Uniform Crime Reports, 40, 43–46, 50, 111, 371
- United States Judges, 88, 91
- United States Marshals Service. *See* USMS
- USMS (United States Marshals Service), 106, 111–12
- vehicle, 15, 20–21, 34, 42, 138, 142–43, 163, 166, 171, 175–76, 182–84
- victim impact statements, 17, 193, 250–51, 253, 265–68, 276–77
- victims, 17, 31, 37–39, 42–44, 47–48, 70, 140, 142, 147–48, 172–74, 235–37, 251, 265–67, 269–71, 275–76, 278, 342–44, 355–57, 370–71, 393–95
- violent crimes, 44–45, 60, 62–63, 65–67, 70, 74, 81, 155, 235–36, 386, 393
- wardens, 20, 96, 290–92, 294, 302, 304, 308, 316–17, 326, 329–30
- warrant, 49, 80, 145, 170, 174–78, 182, 184–85, 190–91, 207–8, 210
- wedding cake model of criminal justice, 4, 18–19, 21–23
- white-collar crime, 26, 41–42, 50, 114
- working personality, 126, 132, 148–49
- work programs, 300–301, 349
- wrongful convictions, 30, 144, 188, 270, 273–74
- years in prison, 18, 31, 41, 72, 189, 250, 344, 350, 396
- years in solitary confinement, 6, 315
- young people, 69, 286, 362–63, 368–69, 374, 380, 382, 384, 392
- young people committing offenses, 362–63
- youth gangs, 359, 362–63, 378, 383
- youths, 62–63, 115, 138, 245, 323, 363–65, 368–71, 374, 377–83

